

UST POLICY COMMISSION MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

March 26, 2003

1:15 o'clock p.m.

JENNIFER SCHUCK, RMR, CRR

Certified Court Reporter

Certificate No. 50020

1                   THE MEETING OF THE UST POLICY COMMISSION held on  
2   March 26, 2003, at 1:15 o'clock p.m., at Law Offices of  
3   Fennemore Craig, 3003 North Central Avenue, Suite 2600,  
4   Phoenix, Arizona, in the presence of:

5  
6                   Michael O'Hara, Chairman  
7                   Harold Gill, Vice Chairman  
8                   Roger Beal  
9                   Gail Clement  
10                  Shannon Davis  
11                  Theresa Foster  
12                  Barbara Pashkowski (Alternate Member)  
13                  Andrea Martincic  
14                  Myron Smith  
15                  George Tsiolis

16                  ABSENT MEMBERS:

17                  Leandra Lewis  
18  
19  
20  
21  
22  
23  
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1 Phoenix, Arizona  
March 26, 2003  
2 1:15 o'clock p.m.

3 P R O C E E D I N G S

4 CHAIRMAN O'HARA: I'm going to go ahead and  
5 call this meeting to order. Thank everyone for being here  
6 for the March meeting of the UST Policy Commission  
7 meeting, the regularly scheduled meeting. Start off with  
8 a roll-call beginning on my left with Theresa.

9 MS. FOSTER: Theresa Foster.

10 MR. TSIOLIS: George Tsiolis.

11 MS. DAVIS: Shannon Davis.

12 CHAIRMAN O'HARA: Mike O'Hara.

13 MR. GILL: Hal Gill.

14 MR. BEAL: Roger Beal.

15 MS. MARTINCIC: Andrea Martincic.

16 MR. SMITH: Myron Smith.

17 MS. CLEMENT: Gail Clement.

18 CHAIRMAN O'HARA: And let the record reflect  
19 Leandra Lewis is not here. She said she had a conflict.  
20 She wanted me to note that.

21 Moving on to Item 2, administrative issues. Has  
22 everyone had an opportunity to receive and review the  
23 minutes from the February meeting?

24 MR. TSIOLIS: Yes.

25 CHAIRMAN O'HARA: Any recommended changes?

1     Comments?   Move those?

2                   MR. GILL:   I move we approve the minutes for  
3     the February 2003 meeting.

4                   MR. TSIOLIS:   I second.

5                   THE COURT:   All those in favor of approving  
6     the minutes from February say aye.   All opposed say nay.  
7     Motion passes.   Minutes are approved.

8                   Moving on to Item B, discuss rescheduling of the  
9     April meeting.   I had a request from someone who had a  
10    conflict, and I don't know if --

11                   MS. MARTINCIC:   APMA has our scholarship  
12    tournament on April 23rd.   And a number of the folks that  
13    are involved would be -- and I would rather not have to  
14    miss the UST Commission meeting.   But I understand that  
15    it's one person's conflict.   So if it's not possible, I  
16    understand.   If it is, I'd ask that we could either --

17                   CHAIRMAN O'HARA:   Why don't I get with Al  
18    and get some alternatives and maybe e-mail that and get  
19    responses.   And if it has to stay on the Wednesday, that's  
20    fine; but let's see if we can all get together.   I'll  
21    circulate an e-mail and just give me your preferences.   Is  
22    that okay?

23                   MR. GILL:   It is a five-week month.

24                   MS. DAVIS:   You could have it on the 30th  
25    because there is five weeks.

1                   CHAIRMAN O'HARA: Anybody know of any  
2 conflicts on that following Wednesday, the 30th?

3                   I will try to get with Al and try and get a date  
4 set and send an e-mail out to see if it's okay. Great.

5                   Item C, ethics training. I received a letter  
6 from the Governor's office. And I don't know if everyone  
7 else received the same letter. There is a meeting  
8 scheduled on Friday, April 25th, from 7:30 to 4:00 at the  
9 ADOT Development Center, 1130 North 22nd Avenue. That was  
10 discussed at our last meeting. All members need to have  
11 an ethics training. That would be a good opportunity to  
12 get that taken care of.

13                  Myron.

14                  MR. SMITH: Mike. I probably should have  
15 remembered to ask this last week when Laurie was with us.  
16 It's just a onetime deal? You don't have to continue?

17                  MS. MARTINCIC: She said it was just a  
18 onetime.

19                  MR. SMITH: It was a onetime?

20                  CHAIRMAN O'HARA: Unless your ethics have  
21 deteriorated since then.

22                  MR. SMITH: I can comment on that, but I  
23 won't.

24                  MS. DAVIS: I wouldn't touch it, Myron.

25                  CHAIRMAN O'HARA: One time is fine.

1 Any other comments on administrative issues?

2 Item 3, ADEQ updates. First item is SAF monthly  
3 report. I believe Judy has an update for us.

4 MS. NAVARRETE: Our update, I think,  
5 everybody has got the handout. Tried to make sure  
6 everybody got it. We had another good month last month of  
7 February. Did 122 interim determinations. And I want you  
8 to take a look at the appeals page -- rather, two pages.  
9 And we are anticipating another good month in March, and I  
10 will report that next month, of course. But Tara has a  
11 few remarks on these informal and formal appeal pages.

12 MS. ROSIE: Hello. Tara Rosie, SAF. If  
13 you'll notice, our appeal percentage has gone up since  
14 last month. It startled us as much, I'm sure, it startled  
15 everyone else. We have been looking through the database  
16 and trying to get a handle on what the predominant appeal  
17 issues are. It appears that the most popular denial  
18 that's appealed is a D97 code, which is a failure to  
19 respond to a request for information or an inadequate  
20 response to a request for information.

21 That stands out to us to signify that  
22 communication is probably one of the key issues that we  
23 need to continue to work on and continue communication  
24 back and forth between the applicants and ADEQ. It's  
25 going to be the only way to resolve that when that is the

1 dominant issue for appeal.

2 Looking at that on applications, appeals that  
3 have been processed from November through the end of  
4 January, about 70 percent of those items -- or those  
5 dollars that were appealed under D97 were then approved on  
6 appeal. But, again, it appears that information wasn't  
7 provided until sometime during the appeal process or  
8 understood. So that's something we're going to be looking  
9 at more closely to try to identify what specific issues  
10 are coming up. And, hopefully, I guess, at the  
11 subcommittee meetings, we will try to provide a little  
12 more detail on that.

13 CHAIRMAN O'HARA: Okay. Any other questions  
14 for Judy and/or Tara?

15 MS. CLEMENT: Question, chairman. The total  
16 formal appeals, then, if I'm reading this correctly, is  
17 five plus five plus seven, which is 17. And that dates  
18 back through November. So basically it includes two  
19 appeals that have been finalized, correct, or not?

20 MS. ROSIE: It's new formal appeals filed on  
21 determinations.

22 MS. CLEMENT: So it does not include the  
23 appeals that have been heard recently by the technical  
24 appeals panel?

25 MS. ROSIE: Correct, correct.

1 MS. CLEMENT: Thank you.

2 CHAIRMAN O'HARA: Any other questions or  
3 comments for Judy or Tara? Thank you.

4 Before going on to Item B, I just want to remind  
5 the public that we have instituted a new procedure for  
6 public comment, and that is use of a speaker slip. So if  
7 any members of the public wish to comment on any of the  
8 topics and/or the general comment period at the end,  
9 please fill out and submit a speaker slip. And you can  
10 put multiple items on one slip.

11 MR. GILL: I thought they didn't have to at  
12 the end.

13 CHAIRMAN O'HARA: For the end?

14 MR. GILL: Very end, it is just call to the  
15 public.

16 CHAIRMAN O'HARA: I don't think we actually  
17 addressed that. My understanding was they always had to  
18 fill out a speaker slip.

19 What's the preference of the members? Speaker  
20 slips at the general public? Seems like it.

21 MR. SMITH: Mm-hmm.

22 MS. CLEMENT: That's what I thought we  
23 agreed to.

24 MS. PASHKOWSKI: I want to note the presence  
25 of the Attorney General representative, Barbara



1 Pashkowski, sitting in for Tamara Huddleston.

2 CHAIRMAN O'HARA: So noted. Thank you.

3 Item B is UST corrective action workload status  
4 report. I believe Ian's got comment on that.

5 MR. BINGHAM: Good afternoon. For the  
6 record, Ian Bingham, manager of the UST corrective action  
7 section. Give you some information regarding preapproval  
8 work plans, closure requests, SCRs, and CAPs processed by  
9 the section the month of February.

10 Work plans, we processed four and received two.  
11 Included in those two, we have a total of four, at the end  
12 of February, work plans that are in-house that have not  
13 yet had reviews completed.

14 Closure requests, we processed 22 in the month  
15 of February. We received an additional ten. The total  
16 closure requests at the end of February within the program  
17 was 24.

18 SCRs, kind of broke even, received seven and  
19 reviewed seven. Got seven determinations out on SCRs  
20 in-house. Total number of SCRs in-house under review  
21 right now is 23 -- or at the end of February, I should  
22 say, was 23.

23 And for corrective action plans, didn't receive  
24 any in February. We did process three, and we got those  
25 out. And there is five corrective action plans still left

1 in-house under review. And when I say "under review," we  
2 have not yet made an initial determination.

3 MR. GILL: What was that again, Ian? Your  
4 last statement?

5 MR. BINGHAM: When I say "under review," we  
6 have not yet issued an initial determination or decision  
7 on the SCR or the CAPs. Just defining what I mean by  
8 "under review."

9 MR. GILL: So we don't know what the total  
10 number of CAPs is?

11 MR. BINGHAM: Total number of CAPs under  
12 review is five.

13 MR. GILL: I had a comment on Phil's, which  
14 looks like the numbers haven't changed from last month, in  
15 the February minutes. He said the same thing, they had --  
16 have a total of five CAPs. And I had a number of people  
17 call me complaining that they at least had that many in.  
18 So I sent an e-mail out to all of the consultants. Here  
19 it is. And basically the total I have is 17 CAPs.

20 MR. BINGHAM: Can you send that to me and we  
21 can resolve it because CAPs that have not had an interim  
22 determination issued is five.

23 MR. GILL: I have seven of those and ten  
24 that are back in again. So the total -- That's why,  
25 again, we're -- where we had problems before, is making

1     sure that we are understanding the same thing that  
2     reflects being reported, that we understand what it is.

3                 MR. BINGHAM: If there is confusion, Hal, I  
4     would look for you to call me and we can talk about it and  
5     see if we can't resolve it. If there is another way you  
6     would like me to report, I'm more than happy to. This is  
7     what I thought we were asked to report.

8                 CHAIRMAN O'HARA: Ms. Foster.

9                 MS. FOSTER: Mr. Chairman, maybe I would  
10    suggest that for the total number, it should be all of the  
11    CAPs and the SCRs that are currently in some sort of  
12    review because it is very misleading when you only hear  
13    five and you know of so many people who are waiting years  
14    to get a CAP reviewed or finalized.

15                MR. GILL: This is only four consultants.

16                MR. BINGHAM: What I understood the issue  
17    was is CAPs that have been submitted. We've never looked  
18    at it. Nobody knows what direction the agency wants us to  
19    go. That is what I understood the question was. I have  
20    absolutely no problem expanding it. I just provided the  
21    response I thought I was asked.

22                CHAIRMAN O'HARA: Hal, would you get with  
23    Ian and make sure you guys are on the same page?

24                MR. GILL: I guess basically, just so I can  
25    see if anybody wants anything further, what I asked for

1 was CAPs, SCRs, work plans, and closures that have not had  
2 a determination. That's what you reported today, the same  
3 group again that have -- that have been turned back in for  
4 a second or a third determination but ultimately how many  
5 CAPs, work plans, SCRs, and closures have not been  
6 approved. And that's the number that Theresa was talking  
7 about.

8 That's really what -- I think, at least there is  
9 two of them. We want to know how many have not had a  
10 determination yet and how many are total -- are still  
11 waiting for approval in whatever...

12 MR. BINGHAM: So waiting in-house and also  
13 where we are waiting for some submittal to the agency?  
14 You want that broken down also? Give me a call, and we  
15 can work this out.

16 MR. GILL: Okay.

17 CHAIRMAN O'HARA: Any more comments or  
18 questions for Ian?

19 Thank you, Ian.

20 Moving on to Item C, UST release reporting and  
21 corrective action guidance. Joe Drosendahl, I think.

22 MR. DROSENDAHL: My name is Joe Drosendahl.  
23 I work for the UST corrective action section. And as I've  
24 reported to the Commission in the past, we're accepting  
25 comments to the UST release reporting and corrective

1 action guidance by the end of March. After that, we'll  
2 start looking at the comments and drafting a response. If  
3 it's after March 31st and people still have comments,  
4 definitely submit those. But we just wanted some starting  
5 point for us to consider changes to the guidance. To date  
6 I haven't received any comments. I know that Hal Gill has  
7 a series of comments. But definitely get those to me as  
8 soon as possible and we can start the revision process.

9           Shortly, on our Web site, we are going to be  
10 publishing the review schedule for the guidance document,  
11 just to let the public know, the process of reviewing and  
12 getting the revised document approved by the UST Policy  
13 Commission.

14           CHAIRMAN O'HARA: Any comments or questions  
15 for Joe? Thanks, Joe.

16           Item D, SAF payments to insurance companies.  
17 This issue has been on the agenda a couple times. I think  
18 we're waiting until there is a hearing on this subject.  
19 And my understanding is there was a decision by the ALJ  
20 which needs to go to the director and be finalized before  
21 DEQ and the AG representatives will be able to fully  
22 discuss it. So I'm intending to have that topic moved  
23 forward to the next meeting so we can have a very fruitful  
24 discussion.

25           In the meantime, there was a request from one of

1 the members regarding outreach and the compliance  
2 assistance program now that this interpretation has been  
3 made going forward. I think the question is: Is the  
4 Department planning on going out and doing some outreach  
5 and helping owner-operators be prepared for this new  
6 interpretation? I'll turn that over. I think Judy is on  
7 the list here.

8 MS. NAVARRETE: Judy Navarrete, section  
9 manager for the State Assurance Fund. On the letters that  
10 have gone out, all the ANs, my name and number is on  
11 there; so I'm fielding all the questions. And if an  
12 owner-operator has a question, then I go through their  
13 whole file with them and help them fill out the insurance  
14 papers, if they need it.

15 So far it hasn't been a big problem. We've  
16 had -- I've had quite a few calls, but they've dropped off  
17 in the last two weeks. And we've had an overwhelming  
18 response, so it's going very well.

19 CHAIRMAN O'HARA: Any comments? Yeah.

20 MS. CLEMENT: Gail Clement. Chairman and  
21 Judy, is there -- other than the bulletin or whatever the  
22 thing that you are posting notices on is called today, is  
23 there any other way, a mechanism, that you are getting out  
24 notice to the owners and operators of this change in  
25 policy?

1                   MS. NAVARRETE: We sent them all AN letters,  
2   applicant notification letters, and explained everything  
3   and the four pages that need to be filled out and my name,  
4   number, direct line. And everything is on there so that  
5   they can contact me.

6                   MS. CLEMENT: So in your opinion, you feel  
7   that they're getting adequate assistance to move forward  
8   into this phase?

9                   MS. NAVARRETE: Yes, I believe so. And like  
10   I said, the number of calls have dropped off significantly  
11   in the last two weeks.

12                  MS. CLEMENT: Thank you.

13                  CHAIRMAN O'HARA: Thank you. Any other  
14   questions, comments for Judy?

15                  Thank you, Judy. You are not off the hook that  
16   easily.

17                  Next item is F, clarification of policies and  
18   guidelines that should be brought to the UST Policy --  
19   Item E, status of SAF rule revision. I think this comes  
20   from last meeting. We discussed -- there were ongoing  
21   meetings probably a year ago on the SAF rule. And it is  
22   very outdated, I believe, and doesn't reflect the current  
23   process. And there were some meetings that the Department  
24   held with stakeholders to revise those rules. And it was  
25   put on hold, I believe, due to the ongoing corrective

1 action rules and the RBCA process.

2 So the question, I think, is out there as to  
3 when those rules on the SAF rule revision, when those  
4 meetings are going to start going forward again. Is there  
5 any intention by the Department to revise those SAF rules,  
6 continuing those meetings?

7 MS. NAVARRETE: I would like to revise the  
8 rules. However, I don't have a rule writer.

9 CHAIRMAN O'HARA: Where is he?

10 MS. NAVARRETE: So we are looking into it.

11 CHAIRMAN O'HARA: I think from the  
12 standpoint that Tara spoke about earlier about  
13 communication to the stakeholders, particularly those that  
14 are preparing applications and filing appeals, it would be  
15 helpful if they could have clarity in the rule as to what  
16 they need to provide going forward. It would probably  
17 make everybody's lives easier as far as --

18 MS. NAVARRETE: Yes, you are absolutely  
19 right.

20 CHAIRMAN O'HARA: Just encourage that. You  
21 will get back to us next meeting as far as a timetable  
22 maybe? Is that too much to ask?

23 MS. NAVARRETE: Yes, I will.

24 CHAIRMAN O'HARA: Get a rule writer  
25 somewhere.



1                   MR. GILL: Is the Department looking at -- I  
2 assume that there is a number of people who could do the  
3 writing. Is the Department looking at getting rule  
4 writers? This is an ancient rule and never really worked  
5 well in the first place, so it needs to be redone.

6                   MS. NAVARRETE: Well, we are looking into  
7 it. My number one priority has been to get rid of the  
8 backlog as fast as possible; and then along with that, we  
9 have to handle other things that come up. And also, I  
10 don't want to jump the gun here on the 21 percent issue,  
11 but I'm limited in what I can hire. So...

12                  CHAIRMAN O'HARA: I'm just confused. Rule  
13 writers, is that just a normal position that DEQ has or is  
14 that a special position you hire when you need to write a  
15 rule? How does that operate?

16                  MS. NAVARRETE: I know the rule writers used  
17 to be in one section up on the eighth floor, but they have  
18 been dispersed to the programs now. And -- Excuse me.

19                  Bob, do you have any comments on that?

20                  MR. ROCHA: Good afternoon. Bob Rocha, for  
21 the record. The Department does have several rule  
22 writers, and they have been dispersed to the programs.  
23 Currently, the SAF does not have a designated rule writer.  
24 The question and issue is, basically, what can we do with  
25 the personnel that we have? Can we use the current

1 resources from another division? That's what we're  
2 exploring.

3 Again, as every program, there are different  
4 funding sources and funding limitations to these  
5 positions. But we're trying to explore every avenue that  
6 we can including looking at our current personnel. Do we  
7 reshuffle? The 21 percent is a limit, but we are looking  
8 at it. Yes, we intend to address the issue; and yes,  
9 we'll come back with a scheduled target date as to when we  
10 can get together and start doing some of these things.  
11 But at this point, the answer is we have been inactive in  
12 that area.

13 CHAIRMAN O'HARA: This might be one of those  
14 situations where an ounce of prevention is worth a pound  
15 of a cure. A little investment in getting these rules  
16 written might save -- It seems like we spend a lot of time  
17 on appeals. That could be a wasted resource. We could  
18 eliminate it if we get those rules written.

19 MR. TSIOLIS: Mr. Chairman, if I just might  
20 add. This is George Tsiolis speaking. I agree with that  
21 last comment you made about the informal appeals. One of  
22 the thing, I think, the rule does is clarify for everybody  
23 what the administrative completeness components are of any  
24 application; in this case, an SAF application for  
25 preapproval/direct-pay reimbursement. It would be nice to

1 try to elevate that rule-writing effort to a higher level  
2 of urgency for that reason.

3 CHAIRMAN O'HARA: I agree with you.

4 Any other comments, questions, on this topic?

5 MR. GILL: Is there anything the Policy  
6 Commission can do? I mean, write a recommendation that we  
7 think it's extremely important just to bring it up to a  
8 higher level, or do they know that this is something that  
9 really needs to be done? There is a lot of issues that  
10 can be taken care of by rewriting rules that are just --  
11 And just like you just said, it is a lot better doing that  
12 now -- doing whatever needs to be done to get the rules  
13 started rather than having continued appeals.

14 MS. DAVIS: Mr. Chairman, as most of you  
15 know, I direct the waste programs division, and Mr. Rocha  
16 has the admin services. Just due to the funding crisis in  
17 the state and the hiring, there has just been an  
18 incredible slowdown in all hirings. And just to let you  
19 know that a rule writer is my single, top priority for  
20 hiring in my division. And as soon as I get any  
21 indication that I can hire, that will be the first  
22 absolute thing I go towards.

23 And it is -- it is a difficult position to fill  
24 because you want somebody with a legal background. You  
25 want a lawyer that's actually interested in writing rules,

1 not disrespecting lawyers who have written them. It is  
2 not something that all lawyers want to do. But just right  
3 now, I think we're not going to be -- I'm not going to be  
4 authorized to hire anybody until the '04 budget  
5 negotiations get closer. I want a rule writer really bad,  
6 and I will be happy to share that rule writer with SAF.  
7 But right now we don't have one, and it is number one for  
8 me. So -- And they know that. I make noise about it.

9 CHAIRMAN O'HARA: Is rule writing particular  
10 for SAF? It seems like that would be more -- a position  
11 that would be a contract position for a short period of  
12 time because you wouldn't need an ongoing rule writer  
13 unless you are writing rules every year. Could that be a  
14 position you could subcontract or contract, rule writers,  
15 for just this task?

16 MS. NAVARRETE: It would still come out of  
17 our 21 percent budget.

18 CHAIRMAN O'HARA: That's an item coming up  
19 in Item H. I don't want to jump ahead. When we get that  
20 21 percent breakdown, do you anticipate -- are we going to  
21 be able to tell what kind of resources are being spent on  
22 appeals? That seems if that is an enormous amount of  
23 resources, we can at least put a dollar figure to how much  
24 we are spending on appeals and quantify what could be  
25 eliminated by writing the rules and juxtapose that.

1                   MS. NAVARRETE: We have everything pretty  
2 well broken down for you.

3                   CHAIRMAN O'HARA: Maybe that will be a  
4 recommendation that comes out of that study, then.  
5 Postpone that.

6                   Any other comments or questions on the rule?

7                   Okay. Now, move on to Item F. Item F is  
8 actually -- I believe Steve Burr was going to make a  
9 presentation, but I don't -- I think that's going to be  
10 postponed to the next meeting. In discussions with Ron  
11 Kern, I think they are in the process of formulating a  
12 response to this question as to what policies and  
13 guidelines will apply as it pertains to the statute which  
14 mandates us to look at those policies and what things,  
15 like the insurance issue, are kind of not policies but  
16 some other area or gray area that doesn't qualify for  
17 that. We just want a little clarification.

18                  I don't know if you were at the last meeting,  
19 Shannon. That's what we -- that's what brought up that  
20 question, what kind of things can we as a Commission  
21 expect to see pursuant to that statute? And then what  
22 kinds of things does the Department feel don't necessarily  
23 qualify as substantive policy or guidelines and we won't  
24 be expecting to see. So just a little clarification there  
25 on going forward.

1           I will postpone that issue to next meeting,  
2 unless anyone has a quick comment or question on that.

3           Moving forward to Item G, status of the bulletin  
4 topic request form. Judy, you're on again.

5           MS. NAVARRETE: Judy Navarrete, section  
6 manager for the State Assurance Fund. I have been trying  
7 to -- I think I tried to do too much with that, and so I'm  
8 going to go back to a simpler plan. I talked it over with  
9 Hal this morning. And I'll get it up on the Web within  
10 the week, and then we can improve upon it as time goes by.  
11 But I'll get it up there.

12           CHAIRMAN O'HARA: Thank you. Any comments,  
13 questions for Judy?

14           Thank you, Judy.

15           Finally, just an update on the status of the  
16 request for the analysis of the 21 percent administrative  
17 budget. Bob, could you give us a brief update on that?

18           MR. ROCHA: Again, Bob Rocha, for the  
19 record. Thank you. Yes, we've got the data pretty well  
20 identified and broken down so that we can sit down with  
21 the financial subcommittee and review that data.

22           I apologize it's taken a little longer. It is  
23 due to my -- my schedule. It's been me that has had the  
24 problem. There is one thing in state government, that's  
25 use it or lose it vacation time; and I didn't want to lose

1 my vacation. So I had to take a few days, so that delayed  
2 me getting back to the issue. Not that it's not very  
3 important, but it's one of those things that I had to do.

4 But I -- we stand ready; and whenever you want  
5 to call the financial subcommittee, hopefully, the middle  
6 of next -- the middle of April would be great.

7 CHAIRMAN O'HARA: That would be a good time  
8 for me. Can we get -- is it possible you can get the data  
9 to us maybe in the next couple weeks?

10 MR. ROCHA: We will get the data before the  
11 meeting to you.

12 CHAIRMAN O'HARA: Perfect.

13 MR. ROCHA: And I would like to sit down and  
14 go over the data with the chair to make sure that we have  
15 ensured -- addressing the points.

16 CHAIRMAN O'HARA: I'll coordinate with you  
17 then, Bob.

18 Any comments or questions for Bob on the budget?  
19 Great. Thank you, Bob.

20 Moving on to Item 4, there was a special meeting  
21 this morning on the groundwater study by Dr. Paul Johnson.  
22 I put it on this agenda so that we could discuss as a  
23 Commission what we want to do with that study going  
24 forward.

25 I'll kind of turn that over to you, Myron. Do

1     you have any suggestions?

2                   MR. SMITH:   Sure.   For those of you who were  
3     at this morning's meeting, it was a very good review of  
4     the groundwater study that is out now.   Any request for  
5     copies need to come through the Commission, and we'll make  
6     sure that you get copies -- copies out to those  
7     individuals who would like them.   ADEQ is working to have  
8     it put up on the Web as well as ASU, and that will come  
9     out as soon as they can get it up on there.

10                  Going forward, the study is done now.   We as a  
11     Policy Commission need to review it, come up with  
12     consensus on what it means and where we want to go with  
13     it.   To that end, I would like to recommend to the  
14     Commission that we now move this under the technical  
15     subcommittee and start looking at having some meetings,  
16     some stakeholder input, to go over this and see where we  
17     need to go with it.

18                  MR. TSIOLIS:   Is that a motion?

19                  MR. SMITH:   No.   That's just a  
20     recommendation.

21                  CHAIRMAN O'HARA:   We can assign it to the  
22     subcommittee, if Hal is ready to take that task.

23                  Doesn't have anything else going on, do you?  
24     Shannon.

25                  MS. DAVIS:   I agree with Myron.   And I think



1   also from what we heard this morning, he came up with  
2   things that were counterintuitive to how we usually do  
3   business. And when we were chatting -- talking about  
4   data, can we use it, can we not use it, is this an  
5   indication of not good data, or is this an indication of  
6   new things we need to look at, his answer was basically  
7   it's a combination of both.

8           And he encouraged us to separate out each  
9   conclusion and see -- see which of those we can go forward  
10   with because the data was good enough to go forward with.  
11   And I think there were some other situations where the  
12   data wasn't able to indicate other steps that we could  
13   take. And I would like to make sure that the technical  
14   subcommittee maybe got Dr. Johnson back, and he can help  
15   us tease those apart.

16           MR. GILL: I already talked to him and told  
17   him I would let him know when we hold meetings.

18           CHAIRMAN O'HARA: Is it possible for us to  
19   get the -- He said we could get it -- I don't know if  
20   anybody had a contact for him, to get the slides that he  
21   presented today.

22           MR. SMITH: Yes. He will make the slides  
23   available to the Policy Commission that he presented  
24   today.

25           CHAIRMAN O'HARA: Are you going to -- Will

1     you head that up for us?

2                   MR. SMITH:   I'll get those and make sure  
3     they get here.

4                   MS. DAVIS:   Let me have staff follow up,  
5     Myron.

6                   CHAIRMAN O'HARA:   Thank you.

7                   Hal, you are going to assign that to a  
8     subcommittee and have meetings?

9                   MR. GILL:    Yeah.   I just have to figure out  
10    where to put this with all the other things we have doing.

11                   CHAIRMAN O'HARA:   Moving on to Item 5,  
12    technical subcommittee update.   I'll turn this over to our  
13    subcommittee chairman, Hal Gill.

14                   MR. KELLEY:   Mr. Chairman.

15                   CHAIRMAN O'HARA:   I apologize.

16                   MR. KELLEY:   Should I just raise my hand  
17    every time I have a -- how should we --

18                   CHAIRMAN O'HARA:   That was my mistake.

19                   MR. KELLEY:   If I want to comment on 3A,  
20    should I comment on 3A?

21                   CHAIRMAN O'HARA:   I have one public comment.  
22    Mr. Dan Kelley of Tierra Dynamic has a comment on Item 3.  
23    And you can go ahead and comment on Item 4 at the same  
24    time.

25                   MR. KELLEY:   Great.   Item 4 would be the

1     easiest.

2                 Myron, how should we go about making that  
3     request to the Policy Commission to get a copy? Send it  
4     to Mike? Send it to you? Smoke screen? E-mail?

5                 MR. SMITH: Send it to me.

6                 MR. KELLEY: Okay. Then on Item 3, 3A,  
7     Tara, could you show me --

8                 CHAIRMAN O'HARA: Address it to me.

9                 MR. KELLEY: I'm sorry. Mr. Chairman, could  
10    you help me understand how the information the SAF gave us  
11    here shows an increase in the appeal rate? I can't read  
12    this to see how there has been an increase.

13                CHAIRMAN O'HARA: Tara, are you prepared to  
14    answer that question?

15                MS. ROSIE: I believe my assumption was  
16    based on the previous month's report.

17                MR. KELLEY: So we don't have the  
18    information here to compare to the previous month. You  
19    just know that in your head?

20                MS. ROSIE: I believe when we were preparing  
21    this, we were looking at it --

22                MR. KELLEY: Okay.

23                MS. ROSIE: -- that information.

24                MR. KELLEY: I would need to go back and  
25    look at that. That's great.

1           Then for Item 3B, I think maybe this is a  
2   question for Hal as much as you because back in October  
3   when we came forward with a couple of reporting formats  
4   for the agency, this was one of the reporting formats of  
5   how to report the UST corrective action section workload.  
6   And SAF is being very diligent about giving us that data  
7   in that format. We are still not getting that data in  
8   that format from the corrective action section. That was  
9   an approved recommendation from the Policy Commission.

10           CHAIRMAN O'HARA: Well, I don't think we've  
11   gotten any response from the director on our  
12   recommendations, whether or not they were going to accept  
13   those or not. So it is still an open question.

14           Was there a format, Hal, on the corrective  
15   action?

16           MR. GILL: I'll talk with Ian. I'll  
17   probably send that.

18           CHAIRMAN O'HARA: Ian sounds like he is  
19   acceptable to any format, just let him know.

20           MR. KELLEY: Then the final question I had  
21   was on H. Did you and Mr. Rocha get some general  
22   agreement we are going to look to have a technical  
23   subcommittee meeting on that in mid-April?

24           CHAIRMAN O'HARA: Financial subcommittee.

25           MR. KELLEY: I mean financial subcommittee.

4 CHAIRMAN O'HARA: I have got another member  
5 of the public who would like to make a comment on Item 4.  
6 Mr. Mora.

11 I wanted to know what alternatives the public  
12 will have to provide comment on the groundwater study. I  
13 think there may be alternative interpretations to the data  
14 that was presented, and there may be people who can't  
15 participate in technical review meetings. And I would  
16 like to request that the Policy Commission look into  
17 alternative ways in which people can send in comments  
18 either by requesting them directly through the Web site  
19 where it's going to be posted because I -- for one, I  
20 think that you may receive other people who may have other  
21 comments that would like to provide it in writing.

23 MR. MORA: Also, the broadcasting of how to  
24 get the reports and other information.

25 CHAIRMAN O'HARA: You think that would be

1 appropriate to send those comments to Hal?

2 MR. SMITH: I think to the Commission in  
3 general, the comments -- Any written comments should be  
4 sent to the Commission as a whole and will be brought up  
5 in the meetings that we have.

6 CHAIRMAN O'HARA: Okay.

7 MR. SMITH: I guess to the point of getting  
8 copies out, anybody who has a business card or wants to  
9 just start a list before you leave, you can leave with me  
10 and I'll make sure things start getting copied and sent  
11 out.

12 CHAIRMAN O'HARA: Okay. Comments  
13 specifically -- Is there any one person on the Commission?  
14 Do you want them to send it to every member? Do you want  
15 it to be a point contact? She recommended maybe Al  
16 Johnson.

17 MR. SMITH: That's fine.

18 MS. DAVIS: I just -- knowing your schedule,  
19 it would just be easy if people could put them to the  
20 attention of Al Johnson. He is the ombudsman. He is  
21 usually the liaison with the Commission, and then he can  
22 get them distributed.

23 CHAIRMAN O'HARA: Good idea.

24 MR. MORA: Thank you very much.

25 CHAIRMAN O'HARA: Thank you.

1           Now, moving on to Item 5, technical subcommittee  
2     update. Hal Gill is our subcommittee chairman. Go ahead,  
3     Hal.

4           MR. GILL: Thank you, Mike. 5A, Joe's  
5     already taken care of that. I have nothing to add to  
6     that. I just wanted to mention the deadline for getting  
7     stuff in, which is the 31st of this month.

8           The last technical subcommittee meeting, we  
9     were -- a discussion item was how to get things through  
10    the meeting and moving to the Policy Commission for a  
11    vote. And I came up with a, what I'm calling, discussion  
12    implementation plan. And, again, basically the idea is  
13    that it does the program and the owner-operators,  
14    stakeholders, no good for these issues to be discussed  
15    ad nauseam in these meetings and never get brought to  
16    fruition and never brought to a vote and a recommendation  
17    is not made.

18          So I have tried to come up with a plan. I sent  
19    this around to the members that were in the last meeting  
20    for comments and finalized it last week or so. And  
21    basically, we'll go over it. And what I would like to do  
22    is run through this and have some discussion on it and see  
23    if it's ready for a vote or if we need to do more work on  
24    it.

25          But, again, basically it is just an idea of how

1 to get the process -- the discussion items through the  
2 process and ultimately to the DEQ. Even though it doesn't  
3 say it specifically, because we're -- our meetings are a  
4 week apart, there is a possibility that on simple issues,  
5 within 14 days we could bring it to the Policy Commission.  
6 But the maximum I want to go is 45 days.

7 And the way we are going to do that is not  
8 having just discussions in the technical subcommittee and  
9 the Policy Commission, we are going to have to have  
10 working groups in between because we've got to get -- we  
11 have to get these issues taken care of because they are  
12 creating all the appeals, one way or the other. This has  
13 nothing to do with who's right or who's wrong. Let's  
14 discuss the issue. Let's get a recommendation, consensus,  
15 or bring it to the Policy Commission. And this explains  
16 it basically.

17 CHAIRMAN O'HARA: Would members like to take  
18 a five-minute break real quick? Not only read that, I  
19 would ask the members to also read this next agenda item,  
20 Administrative Case Law Policy 132 which has just been  
21 passed around. And if you could take a moment to read  
22 both of those, and we'll address those issues after the  
23 break.

24 How about ten minutes? Actually, we'll start at  
25 ten minutes after 2:00. Thank you.



1 (Whereupon, a recess was taken from  
2 1:53 o'clock p.m. to 2:12 o'clock p.m.)

3 CHAIRMAN O'HARA: Get things back to order.  
4 Continue where we left off with Hal discussing this new  
5 policy of the implementation plan. Go ahead, Hal.

6 MR. GILL: I sent this out, as I said, about  
7 two weeks ago and never really did get any comments back.  
8 Now people are coming up to me with legitimate questions  
9 on how this works, and I'll just go through it and try to  
10 explain it, and then we can discuss it and make changes.  
11 This isn't -- I'm just putting this out because we have so  
12 many issues that need to be moved forward.

13 But basically the -- at the start -- And this is  
14 stakeholders, DEQ, that has an issue that they want to  
15 bring to the stakeholders and ultimately the Commission  
16 for a vote, what I would ask is that if you know you are  
17 going to be bringing this forward, present and prepare  
18 backup items, discussion items, that you can send to DEQ,  
19 send to the Policy Commission, or at least to me and any  
20 other owner-operator or stakeholders that you know may be  
21 at those meetings. And that way when we get to the  
22 meeting, we can have more of a discussion rather than just  
23 starting out brand new. But that's what I was getting at  
24 in number one, is that you are already prepared to discuss  
25 the issue, although it may not end up on the agenda for

1     that particular meeting.

2             Number 2 is basically putting things on the  
3     meeting agenda for the particular meeting that we're  
4     holding. And what I'll hand out in a second -- Next is  
5     the one thing we did do in the last technical subcommittee  
6     meeting was prioritize at least the first five issues that  
7     we felt -- the stakeholders present felt were critical, in  
8     other words, causing most of the appeals and denials and  
9     divisions and those kinds of things, in the different  
10    documents.

11            So basically at the -- when you come to the  
12    first meeting with your issue, you will be presenting the  
13    data for "This is what I would like on the agenda." And  
14    then we will consider that in prioritization and see if it  
15    will actually fall in -- if it is important enough to fall  
16    into that group of five we've already got or if it ends up  
17    going down to the end of the line or whatever. We have to  
18    look at these issues as they come in, seeing as how we are  
19    starting a prioritization program to try to get the most  
20    important ones out first. So you are not guaranteed of  
21    getting it on the next agenda.

22            Again, the whole point of this plan is to get  
23    the issues discussed, consensus met, and, if not, a plan  
24    to still move the process forward because we have to get  
25    it to the Policy Commission for a vote and recommendation

1 so everybody -- all the stakeholders know what the issue  
2 is and where we're going with it.

3 So Number 3 on here is -- this is basically the  
4 initial meeting, that we're finally addressing it. And as  
5 it says here if consensus can be reached, then we can  
6 potentially -- because we're staggered in our meetings  
7 with the Policy Commission, we could potentially get an  
8 issue in 14 days to the Policy Commission for a discussion  
9 and a vote. And that's if it's a really simple issue and  
10 we reach consensus real quick.

11 This hasn't necessarily always been the case.  
12 So if we cannot reach consensus in the meeting -- the  
13 subcommittee meeting that we are discussing the issue, the  
14 initial discussion, rather than wait a full month before  
15 we have another discussion on that and then -- And based  
16 on that, again, if we don't reach a consensus, again, it  
17 just keeps going a month at a time. We need to bring the  
18 people to the table here.

19 And so I'm not adverse to forming working  
20 groups, and as I say here, I said as many as possible or  
21 as many as is necessary, to discuss the issue. Now, it  
22 will be pretty obvious real quick if there's no resolution  
23 going to be made and if we're not going to reach  
24 consensus. If that's the case, then I will just bring it  
25 to the next Policy Commission meeting.

1           But I want to give both sides all the  
2   opportunity to provide their discussion. And if the group  
3   that is in that subcommittee meeting feels that it looks  
4   like this is something we can work out, then we can take  
5   one, two, three meetings for a working group. If it just  
6   appears this is not going to happen, then it will be on  
7   the next Policy Commission agenda for -- But each side  
8   needs to be prepared to present their side to the Policy  
9   Commission so we can decide whether or not we can vote on  
10  it or not.

11           And then the next step is to go to the next  
12  regularly scheduled -- well, actually Number 5 is in  
13  between there. If it ends up it is one that we could not  
14  reach it and we ended up going and having some working  
15  group meetings and it has been resolved, we move it to the  
16  next Policy Commission. At that time, as I said, the  
17  presentations are given to the Policy Commission.

18           If they don't feel they have enough information  
19  to really make their minds up, then the Policy Commission  
20  can decide to send it back for more discussion or vote on  
21  it, as they see fit. But, again, it's just -- And I  
22  realize it is confusing, and it is kind of hard working  
23  two things that are overlapping like this.

24           The main thing is that we really have to move  
25  these issues forward. We have to get everyone coming to

1 the table and presenting -- being involved in the  
2 discussion so we can reach consensus.

3 Gail.

4 MS. CLEMENT: Gail Clement. Mr. Gill, my  
5 question is, it's almost like the last person standing.  
6 Don't take this, please, in any offensive way. But it  
7 starts with the Policy Commission potentially. And then  
8 you get an assignment in the subcommittee and then you  
9 can't reach consensus with the subcommittee working and  
10 then it goes down to a working group. And a lot of people  
11 can't participate to that level and extent.

12 So if the working group is the place where you  
13 are going to reach consensus, that's what my concern is.  
14 It is the last person standing that could participate at  
15 all those levels.

16 Will it come back from the working group to the  
17 subcommittee or come back from the working group to the  
18 Policy Commission?

19 MR. GILL: Number 5, it does come back to  
20 the next regularly scheduled subcommittee meeting.

21 MS. CLEMENT: If you get a lot of discussion  
22 in the subcommittee in opposition to what the working  
23 group decided, how are you going to manage that?

24 MR. GILL: Well, as I said, whether or not  
25 it goes to a working group depends on whether the group

1     that's in that subcommittee really feels that it is going  
2     to get resolved because it may not go there. I think it  
3     would be the same thing once it comes back to the  
4     subcommittee. If the issues that are brought up by  
5     another party that had not been involved in it are too far  
6     apart, then we'd have to make the same call, whether or  
7     not we feel that we can make a -- come to consensus on  
8     whatever the issues may be. But I want to move it to the  
9     Policy Commission regardless in 45 days.

10                 MR. TSIOLIS: Mr. Chairman, I have a  
11     question. George Tsiolis. Does this process allow for a  
12     quorum of just one person to forward a recommendation  
13     ultimately back to the Policy Commission for it to be  
14     cognizable by the Policy Commission? Is it possible under  
15     this process that, you know, there is a whittling-down  
16     process of people who can attend? Suddenly, there is one  
17     person left. And I vote yes for the policy and it goes  
18     back to the Policy Commission with a recommendation for  
19     approval?

20                 MR. GILL: We have had -- what did we have,  
21     three people, Ian, at one point at some meetings when we  
22     were going through the guidance document? You can get  
23     very few. We were just discussing. We weren't making  
24     final recommendations.

25                 MR. TSIOLIS: Is it for the Policy

1 Commission, then, to decide how much probative value to  
2 give to a recommendation that is made up of only two  
3 people or three people? Or is it basically not even  
4 cognizable if it is less than a certain number of people  
5 making the recommendation? I'm new here, so I don't know  
6 exactly how the technical subcommittee works.

7 MR. GILL: There isn't any quorum for the  
8 technical subcommittee. It is basically just a discussion  
9 forum. And then the discussion -- if there are two sides  
10 to the issue, then those two sides need to be brought  
11 forward. And if one person decides that he didn't like  
12 it, he can also make a presentation on that same issue to  
13 the Policy Commission.

14 It is just -- it is a forum to discuss the  
15 issues to bring back -- the technical issues to bring back  
16 the recommendations to the Policy Commission. If there is  
17 consensus, it is one recommendation. If it is not, then  
18 there is however many people have ideas. It is really  
19 just to -- rather than the Policy Commission to all sit  
20 and go through the meetings that we go through in the  
21 subcommittee and the discussion, it is really made for  
22 that. But it needs to be -- once it is presented to the  
23 Policy Commission, it needs to be in a format where the  
24 Policy Commission understands what the issues were and  
25 make a decision whether or not they can vote on it or not.

1                   MR. TSIOLIS: Does DEQ regularly send  
2 somebody to these subcommittee meetings?

3                   MR. GILL: Yes.

4                   MR. TSIOLIS: They stay involved the whole  
5 time? Thank you.

6                   CHAIRMAN O'HARA: Ms. Foster.

7                   MS. FOSTER: Mr. Chairman, Hal, how many  
8 items are normally on your subcommittee's agenda?

9                   MR. GILL: It has been just about as long as  
10 the subcommittee. We don't get to all of them. That's  
11 why we prioritize the top five, and we are going to be  
12 trying to do one to two of those a meeting. That's my  
13 next bullet point. I'm going to hand out the issues that  
14 we prioritized.

15                  MS. FOSTER: In your document, you state  
16 that the process adopted should take a maximum of six  
17 weeks from the initial subcommittee meeting to a  
18 Commission vote. I can't see that happening if you have a  
19 whole pageful of agenda items.

20                  MR. GILL: I am just talking about the  
21 individual issue that the stakeholder, DEQ, or an  
22 owner-operator brings. It is not -- I am not talking  
23 about the entire agenda. I'm talking about an individual  
24 issue. We may have two or three on the agenda, but it's  
25 only those ones that we're discussing to -- for a



1 recommendation that this deals with.

2 MS. FOSTER: I don't see that clarification  
3 in that paragraph, that it will only be the top two or  
4 three items.

5 MS. MARTINCIC: Maybe if I could -- I think  
6 it goes when he was saying placing on the agenda,  
7 Number 2, during the "Explanation" section, like on the  
8 discussion page, the subcommittee will consider placement  
9 and, if accepted, prioritize it.

10 Is that, Hal, how you are planning on dealing  
11 with that? In other words, if someone brings an issue,  
12 the subcommittee will discuss and decide whether it is  
13 important enough to trump some of the other issues that  
14 the committee is dealing with?

15 MR. GILL: Exactly.

16 MS. MARTINCIC: So maybe a maximum of six  
17 weeks. It is more likely that it's a minimum of six  
18 weeks -- or the six weeks would be the best-case scenario,  
19 in other words, I think is more appropriate, probably,  
20 because if it does go into working groups, it would take  
21 longer than six weeks, I think. Right?

22 MR. GILL: I guess what I need to clarify is  
23 basically I see this as six weeks once we actually start  
24 discussing it, the issue.

25 MS. MARTINCIC: It could take one meeting

1 just to even get it figured out where it's placed within  
2 the prioritization list of the subcommittee.

3 MR. GILL: I can't -- Like I said, there is  
4 so many. That's why we prioritized, made this list.  
5 There is so many issues. We had almost a page and a  
6 quarter of items and we prioritized. I think there was 12  
7 of them. And we prioritized the top -- the top five,  
8 whittled out the top five. And this is kind of -- one  
9 thing that is confusing, we basically have identified in  
10 those top five what we are going to start with. This had  
11 to address something new that comes in.

12 So it is kind of confusing. If something comes  
13 in, where do we stick it? It may end up being at the end  
14 of the list. I probably need to clarify that. It can't  
15 guarantee that it is going to be to the Policy Commission  
16 in six weeks.

17 MS. FOSTER: And another question on top of  
18 that, is this the only way to get an agenda item on the  
19 Commission's meetings, to go through the subcommittee?

20 MR. GILL: No. You can bring anything.  
21 This is just once it goes -- it's been discussed in the  
22 subcommittee meeting. And, again, it doesn't have to be  
23 anything that's in stone. I just -- we have to move  
24 things through the process. We are just spinning our  
25 wheels. We discuss it and discuss it and discuss it, and

1 it is not getting resolved. So all the stakeholders need  
2 to step up to the table, and we have to bring  
3 recommendations forward.

4 MR. BEAL: I had a question similar to  
5 Theresa's last one about how the items get on this. When  
6 I see the stakeholders -- Commission members wish to have  
7 an issue considered, shouldn't the Policy Commission  
8 prioritize issues and assign to the technical subcommittee  
9 the task of investigating and developing an opinion on  
10 that list --

11 CHAIRMAN O'HARA: Preferably.

12 MR. GILL: Yeah, mm-hmm.

13 MR. BEAL: -- on those issues and then bring  
14 it back to us so at least we know what the technical  
15 subcommittee issues are and are expecting that?

16 CHAIRMAN O'HARA: That might be a good --  
17 postponing this Item Number 7. We are going to get into a  
18 discussion of how items get on our agenda. And not only  
19 that, I think in Item B we are going to talk about, with  
20 our limited time, trying to prioritize the things that we  
21 want to look at as a Commission pursuant to that statute.  
22 There's five mandates in there and some other things that  
23 we should be doing.

24 As part of that, I think maybe we can talk about  
25 the process for identifying prioritizing our issues and

1 then assigning those to either the financial subcommittee,  
2 technical subcommittee, or just this full Commission.

3 And what Hal, I think, is talking about is a  
4 different avenue where he's getting comments, questions,  
5 coming from the bottom up to this Commission; and then he  
6 brings new issues to us. I don't think that was the way  
7 it was originally envisioned, although I'm not for or  
8 against it. I think we need to decide as a Commission how  
9 we want to deal with it. That discussion, I'm saying, may  
10 be more appropriate for Item 7.

11 Go ahead.

12 MS. MARTINCIC: I have a question. Andrea  
13 Martincic. Hal, with the prioritization list from the  
14 subcommittee now and -- You know, I thought all these  
15 issues came from the Policy Commission to be looked at by  
16 the technical subcommittee. That's not been the case?

17 MR. GILL: When we went through the guidance  
18 document is where the original list -- the long list that  
19 you saw in the subcommittee meeting, when we went through  
20 the guidance document, there was a lot of parking lot  
21 issues, we called them, that we -- so we could keep moving  
22 forward with the guidance document, approve it so the  
23 guidance document and the rule could move forward.

24 On the issues that needed more discussion, we  
25 put them in the parking lot issues with the idea that we

1     were going to discuss them in the technical subcommittee.  
2     But I had lost sight -- lost track of them. We hadn't  
3     brought them to the Policy Commission to go forward.

4                   MS. MARTINCIC: These are parking lot issues  
5     that came up during --

6                   MR. GILL: The last meeting we prioritized  
7     them. Now we're bringing them to the Policy Commission to  
8     see if they want to basically --

9                   MS. MARTINCIC: Continue to pursue them.

10                  MR. GILL: That would be the first step.  
11     Rather than it come to me, it would come to the Policy  
12     Commission.

13                  CHAIRMAN O'HARA: I think we as a Commission  
14     could probably do a better job of directing what issues we  
15     want the subcommittee to look at rather than you having to  
16     entertain all these requests. You may be studying an  
17     issue that ultimately the Commission doesn't feel is  
18     appropriate to spend its full time on.

19                  MR. GILL: That's fine. That could be  
20     changed to going to the Policy Commission.

21                  CHAIRMAN O'HARA: We can talk about that  
22     under Item 7.

23                  MS. MARTINCIC: You could still, I guess --  
24     you can still use this process, I guess, for working  
25     within the subcommittee, though. Once an issue comes to

1     you, that's what you would do.

2                     MR. GILL:   That's what it's for.

3                     MS. MARTINCIC:   Initially, the issue should  
4     first come to the Policy Commission and be brought either  
5     from someone in the public or stakeholder, DEQ, or  
6     whoever; and then it would get --

7                     CHAIRMAN O'HARA:   Then we in Item 7 would  
8     discuss and say, Is this an item that the Commission feels  
9     is worthy of spending all its time on? We can say, "Yeah,  
10    let's assign this to one of our subcommittees."

11                    MR. GILL:   Actually, now that I read it,  
12    that's really where it starts. In other words, once it is  
13    sent to the -- Like, Number 1 is basically if this is an  
14    issue you want, you need to get the data together and  
15    present it to the Policy Commission so they can decide  
16    whether or not it is an issue that needs to go to the  
17    technical subcommittee. Then in Number 2, once it goes to  
18    the subcommittee, we have to prioritize where it goes.

19                    Do we need to do anything further with this?

20                    CHAIRMAN O'HARA:   My opinion is you're the  
21    chairman of the technical subcommittee. And whatever  
22    process or procedures you put in place to get your  
23    recommendations up to us I'll leave to your discretion.

24                    I think the financial subcommittee is fairly  
25    informal also. We have meetings. It has never been the

1 kind of issue you're having, getting issues and trying to  
2 get those up to us. I'll leave that to your discretion  
3 unless the members want to make a formal vote on it or  
4 approve that for you. I think you're the chairman. You  
5 can come up with whatever policies are appropriate.

6 MR. TSIOLIS: I agree with that. Just as  
7 issues can come in the first instance of the Policy  
8 Commission, how they get back to us from the subcommittee  
9 is -- it is not going to affect the appropriateness of our  
10 consideration of those issues. It will just add weight to  
11 it.

12 CHAIRMAN O'HARA: C.

13 MR. GILL: I guess the next issue was  
14 just -- was the parking lot issues. That's the list that  
15 I handed out. I guess the Policy Commission needs to look  
16 at that and decide if they have any problems with the  
17 issues on there. We prioritized that. I think I gave  
18 mine away.

19 We went through the large list that we had come  
20 up with in reviewing the guidance document that had a  
21 large number of 12 or more issues on it. And of those 12,  
22 we prioritized to these five. So these are the five that  
23 we felt were creating most of the deficiencies and denials  
24 on applications and in work plans and CAPs and those kinds  
25 of things.

1           And so we prioritized them based on that. In  
2 other words, if we can resolve these issues, hopefully we  
3 can reduce the denials, deficiencies, and ultimately the  
4 appeals. So that's really what this whole thing has to do  
5 with.

6           So I just would present this to the Policy  
7 Commission as basically this is the five top issues that  
8 we came up with. And if you have any questions or  
9 anything about it -- And, again, I don't -- from what you  
10 just said, we never really thought about that before. But  
11 do we need to look at this, and do we have to vote on  
12 sending all five or individually or whatever?

13           CHAIRMAN O'HARA: Just get a consensus from  
14 the members. The general topic here is items that are  
15 causing appeals based on technical issues? I think that's  
16 obviously a big issue.

17           MS. FOSTER: Mr. Chairman, I have a  
18 question. Does DEQ agree with these top five because what  
19 I'm hearing from DEQ is more of a communication problem  
20 rather than individual issues.

21           CHAIRMAN O'HARA: Who made this list, Hal?  
22 I'm sorry.

23           MR. GILL: The list originally came from the  
24 parking lot list that was made up by Al at the meetings.  
25 And then the large list was sent to -- The last technical



1 subcommittee, we went -- all the people that were there, I  
2 asked for comment, and these were the five we came up  
3 with. And I didn't hear yeah or nay from DEQ. There were  
4 five of them that were there.

5 MR. BEAL: Aren't the parking lot issues --  
6 I don't know what they are, so I'm asking this as a  
7 question. Are these things that were not fully developed  
8 in the guidance document?

9 MR. GILL: No. It was just -- there was  
10 issues about the -- questions about these issues in the  
11 guidance document. In other words, there was a -- either  
12 we don't know whether it necessarily was a  
13 misunderstanding or difference of opinion of the way you  
14 do particular things. These were issues that we decided,  
15 okay, it looks like it's something we can't resolve right  
16 now. We'll agree with what we can put in that guidance  
17 document and send that forward, and that's what was done.

18 And these issues were put aside in the parking  
19 lot for discussion at a later time, assuming it would be  
20 under the technical subcommittee or the Policy Commission,  
21 doesn't matter.

22 MR. BEAL: I guess I was under the  
23 impression that these issues were still something that the  
24 technical subcommittee was already directed to develop as  
25 you reviewed the guidance document and that these

1 conclusions would have come forward in some sort of  
2 addendum. This is the recommended solution to these  
3 sections that we --

4 MR. GILL: I don't think we necessarily said  
5 that specifically when we sent the guidance document to  
6 the technical subcommittee for review. The idea is that  
7 we'd go through the technical -- the guidance document, we  
8 would get a consensus from everybody, and the whole thing  
9 goes forward. These fell out. I don't think that was  
10 really addressed in what was initially said when it was  
11 sent to the technical subcommittee.

12 CHAIRMAN O'HARA: I think Judy had a  
13 comment.

14 Did you have a comment?

15 MS. NAVARRETE: I thought in the last  
16 technical subcommittee meeting, too, that you wanted some  
17 input from ADEQ on the top items that are being -- that  
18 we're seeing in appeals, so I'm working on that. And  
19 also, there has been a survey sent out to get the input  
20 from the regulated public. And then we were going to come  
21 back in the next technical subcommittee, or if I get the  
22 information all together before then, and give you that  
23 information as to what the consultants feel -- the  
24 regulated community feels are the top items and actually  
25 what's in our database. And we're researching that.

1           And the number one item was failure to respond,  
2   so we can go on from there. But these issues -- these  
3   parking lot issues are totally different from the issues  
4   that are being appealed most. So --

5           MR. GILL: What does "failure to respond"  
6   mean?

7           MS. NAVARRETE: Whatever you want to address  
8   in the technical subcommittee is your choice. But if you  
9   want to address what is being appealed the most, we will  
10   give you that information, and I had stated I would give  
11   you that information in the last technical subcommittee  
12   meeting.

13          MR. GILL: I remember last year we did  
14   exactly the same thing. We had -- Patricia came forward  
15   with a list of this is the most -- this is where most of  
16   the appeals are coming from. And at the same time, the  
17   consultants came up with a list. And they were absolutely  
18   nowhere near each other. And I would be glad to see your  
19   list, but "failure to respond" can mean any number of  
20   things. And it may not even be a technical issue at all,  
21   and these are technical issues.

22          MS. NAVARRETE: We can go on from two,  
23   three, and four.

24          MR. GILL: I need -- I have no problem. And  
25   I don't remember that being -- I apologize. I don't

1 remember being -- that you were going to do that. I don't  
2 remember you saying that at all, and I apologize. And I  
3 don't have any problem looking at that list, but I'm  
4 afraid that many of them --

5 MS. NAVARRETE: From the consultant's view,  
6 it would be a perception of what's being appealed. If we  
7 get it out of the database and we do an analysis of what's  
8 being appealed, that will be what is being appealed the  
9 most.

10 MR. GILL: I guess what I'm more interested  
11 in, based on what I remember came out of the last list, is  
12 I'm more interested in what technical activities are being  
13 denied or deficiencies more because that's -- you know,  
14 the codes that come out, this is coded this and this is  
15 coded that, really --

16 MS. NAVARRETE: So you only want to deal  
17 with the technical issues?

18 MR. GILL: That's all the subcommittee is  
19 really -- it is the technical subcommittee.

20 MS. NAVARRETE: We'll give you the top items  
21 under technical.

22 MR. GILL: "Failure to respond," I don't  
23 even know what that means. It means a lot of different  
24 things depending on what -- I can look at, Well, DEQ  
25 didn't respond. I don't really know what that code means

1 if you don't use them all the time. It can mean several  
2 different things, but most of them were not technical. It  
3 is not providing data. It is not necessarily a technical  
4 issue.

5 But I do know from personal experience and  
6 hearing from umpteen different consultants that  
7 groundwater sampling and water level measurement issues  
8 are the number one things they are getting -- Again, it is  
9 the same mind-set. They are not looking at the appeals --  
10 or the denials you are talking about as a technical  
11 appeal. You know, it is a separate list. That's why when  
12 we did it last year, it was two completely different  
13 lists: One prepared by the consultants, one prepared by  
14 DEQ or by SAF. Because if you look on the number one --  
15 number of appeals and if it's -- Well, we are repeating it  
16 again. Basically it was two completely different lists.

17 CHAIRMAN O'HARA: Roger.

18 MR. BEAL: I'm listening here, and I'm kind  
19 of wondering if there isn't an opportunity and whether an  
20 item can be put on the agenda specific enough to allow us  
21 to talk but also allow presentation. For example, if you  
22 discover the most appealed items that for whatever reason,  
23 maybe that's something that the community really needs to  
24 know where the mistakes are being made.

25 And if they are technical in nature, maybe we

1    need to know that from the outside in, we feel the most  
2    frustrated here, as a way to make a recommendation on how  
3    to change what it is that we're doing to make it work  
4    better. I don't know how we could label the agenda item  
5    other than the opportunity to present problem areas or  
6    something like that. I don't know what label to put on  
7    it.

8                I sense a value in knowing why you're denying  
9    the majority of your applications, and I can also  
10   appreciate the frustration of not knowing what to do next  
11   because of the lack of process determination. Then we can  
12   say, Take that to the technical subcommittee meeting and  
13   work these edges out, develop that, as we did with the  
14   guidance document. And be sure to let the community know  
15   as part of the bulletin process where the greatest  
16   friction is. And it doesn't mean it is bad, it just means  
17   it is the roughest area to work through.

18               MR. GILL: I would be glad to see your list.  
19   I will also pull up the one from last year to see if there  
20   has been any change from what was reported as the most  
21   appealed last year. I still have all that.

22               CHAIRMAN O'HARA: Shannon.

23               MS. DAVIS: Mr. Chairman, one of my goals in  
24   sitting on this Commission is to make sure that the  
25   resources of the agency are deployed in such a way that

1 best serves this Commission. And I want to make sure that  
2 the Commission is being very clear with the agency about  
3 what its priorities are. And I think there is ample  
4 opportunity for confusion sometimes.

5           So I just want to encourage all of us sitting  
6 around the table, just please be clear with us about what  
7 it is that you're asking because I want the resources to  
8 get you what you want, whether it is data, comparison and  
9 contrast, what's happening with the State Assurance Fund,  
10 all those things. And sometimes when we get down into the  
11 work groups and subcommittees and the technical  
12 committees, a lot of stuff goes on there and it is hard to  
13 filter back up; and I'm trying to sew it up.

14           But please speak up as the Commission so that I  
15 know exactly what it is the Commission needs in order to  
16 make the decisions. And then I can deploy resources to  
17 the best of my ability because right now, as you all know,  
18 we've swung a lot of resources over to Judy's section from  
19 the corrective action section to get the backlog down.  
20 Those resources are going to be over there for a while,  
21 and there is a light at the end of the tunnel Judy tells  
22 me. I'm not allowed to say when, but there is a light at  
23 the end of the tunnel.

24           But that makes technical issues, staffing  
25 committees, we're short. I just want to plead that you

1 are just really clear, and we'll do that. We'll get you  
2 what you want. But it's like we are taking directions  
3 from two different levels, and they are not always  
4 consistent or we're not understanding them really clearly.

5 I think one way to be really clear, Hal and Judy  
6 and Joe and Ian, when we work with those subcommittees,  
7 whether it is financial or technical, I think we need to  
8 paper the record and what direction was given and what was  
9 agreed on. I think that's happening. I think we need to  
10 create a written record so we are all understanding the  
11 same assignment. And are we going after appeals,  
12 determinations here? Are we going after Drosendahl's --  
13 what the technical issues are and the guidance document?

14 I know it is a maturation process for the  
15 Commission to go through. But please speak up with how  
16 you want to see the resources serve you best.

17 MR. TSIOLIS: I would like to speak up to  
18 that point, then. It seems to me like the last three or  
19 four years the pendulum has swung over into the technical  
20 side, and the financial side, not only the backlog but  
21 also the process description and the rules and policies  
22 for SAF, have been languishing. And the rules currently  
23 that describe the SAF process are completely irrelevant to  
24 the actual process as it's ongoing.

25 If there is a choice that needs to be made as to



1    how the Department applies its limited resources, I think  
2    these are interesting issues. When I see things like  
3    water level monitoring, I worry at this point they may be  
4    hypertechnical for the purposes of this Commission's  
5    deliberations. Whereas, there is so much we can do as a  
6    Commission towards helping the Department focus its  
7    resources on the backlog of SAF issues that have  
8    clearly focused these last few years on fine tuning, fine  
9    tuning, and fine tuning the corrective action process  
10   through guidance and through subcommittee meetings.

11                So to your point, I would recommend if there is  
12   a choice to be made here, that we try to focus more on SAF  
13   issues for the time being.

14                CHAIRMAN O'HARA: Hal.

15                MR. GILL: The only point I would like to  
16   make, that's why we need to see this -- the list. And  
17   we'll come up with our list as well, is that what we had  
18   found in the past -- And again, we are obviously looking  
19   at two different lists. But our list showed that water  
20   level measurement for groundwater sampling is creating  
21   appeals; and that's why that's an issue, is that if we are  
22   not going to look at -- because this whole program is a  
23   technical program.

24                SAF just happens to manage the money side of it,  
25   but it is run by the technical. That's why -- actually,

1 one thing I've forgotten to comment on, on Phil's talk  
2 last week, he mentioned that there was only 12 technical  
3 appeals. And I would be willing to bet that 90 percent of  
4 those nontechnical appeals were technical issues, that  
5 they were in the SAF program. So they are all -- they are  
6 really all technical.

7 That's why the program has continued along where  
8 we have been discussing general issues, and it is going  
9 more and more towards technical because we are finding out  
10 that it is these technical things that are creating all  
11 the problems.

12 MR. TSIOLIS: I think I am beginning to  
13 understand more, then. The question I have, is water  
14 level monitoring, for instance, something that -- Can you  
15 give me an example of what's meant by "water level  
16 monitoring" just to crystallize that issue for me? Is it  
17 the technical equipment used? Is it the type of equipment  
18 that's used? Is it the frequency? Is it all those  
19 things?

20 CHAIRMAN O'HARA: What generates the  
21 appeals?

22 MR. TSIOLIS: What is it that's in dispute  
23 during the informal appeal process regarding water level  
24 measurement as an illustration?

25 MR. KELLEY: Frequency.

1                   MR. TSIOLIS: "Frequency" seems to me like  
2 something that needs to be addressed in rule. Is  
3 frequency of water level measuring post the response  
4 action towards monitor attenuation, is that not  
5 already discussed in the corrective action rules in  
6 guidance?

7                   MS. PASHKOWSKI: It is in guidance.

8                   MR. TSIOLIS: That's assuming it's in  
9 guidance.

10                  MR. KELLEY: No, it's not.

11                  MR. TSIOLIS: So it was one of those things  
12 that was bypassed by past resistance and moving towards --  
13 And it is a major issue.

14                  MR. GILL: It is in guidance, but it doesn't  
15 cover all of the issue. In other words, it leaves it --  
16 it leaves us at a point.

17                  MR. TSIOLIS: I get it now.

18                  MR. GILL: Without going into the  
19 discussion, that's what we discussed at the last meeting,  
20 is that -- and that's, I think, the next thing on my  
21 agenda, is going into -- we are working on a plan to  
22 continue that as well.

23                  But the main point of your concern is that it  
24 looks like we are getting down to the minutia. And we are  
25 trying to keep the minutia away from the Policy

1 Commission, but the minutia is what's running the program.

2 MR. TSIOLIS: The SAF backlog is primarily  
3 due to technical issues rather than uncertainty about how  
4 the SAF process needs to be revised?

5 MR. GILL: Both, both. I think the list --  
6 assuming the list Judy comes up with is similar to the one  
7 that Patricia did last year when we asked for it as a  
8 Commission, it was really -- the ones that are appealed  
9 the most are mistakes on the application or failure to  
10 respond. But the ones upper most from all the  
11 owner-operators and folks in mine were all technical.

12 MS. PASHKOWSKI: I have a question, Hal.

13 MR. TSIOLIS: Thanks, Hal.

14 MS. PASHKOWSKI: I hear what Judy is saying,  
15 and I know that in order for the Department to get a list  
16 of what technical issues are being appealed they can do a  
17 database search and pull up the codes. And if I hear you  
18 correctly, their list doesn't necessarily match yours.

19 I'm curious as to how many people you've spoken  
20 to to create your list. Is it a limited number of people,  
21 or are you getting input from everybody that could  
22 possibly be appealing? Because if you are getting it from  
23 a limited number, it is not necessarily going to match  
24 what the Department has. Who is giving you the  
25 information?

1                   MR. GILL: I have a list of 28, 32  
2 consultants that I send it out to and wait for comments to  
3 come back.

4                   MS. PASHKOWSKI: How many actually  
5 responded?

6                   MR. GILL: Well, that was last year. I  
7 don't know. For instance, like I said, on the CAPs issue,  
8 I had 10 different companies get back with me as far as  
9 CAPs and SCRs and things. It is different for each time  
10 you ask for information because -- And I get phone calls,  
11 too, rather than just an e-mail.

12                  MS. PASHKOWSKI: You may never have a list  
13 that matches the Department's when the Department is  
14 actually querying the database that shows what actually is  
15 appealed.

16                  MR. GILL: Not as far as -- Well, again, if  
17 you query it for what is appealed and it comes out failure  
18 to respond, well, I think -- or an application mistake is  
19 an easier one -- Again, I am not exactly sure what --  
20 "Failure to respond" can cover a wide range of things.

21                  MS. ROSIE: If you'd like the code, Hal, it  
22 is information requested during the applicant notification  
23 period was not provided or was not adequate. Therefore,  
24 the costs are not reimbursable.

25                  CHAIRMAN O'HARA: That's a general catchall.

1 The problem -- I think what you are asking, their  
2 descriptions aren't as detailed as the description he's  
3 listed here. They couldn't tell you what the technical  
4 reasons were in the database. I think the database has  
5 catchalls for denial codes.

6 MS. ROSIE: We could sort it according to  
7 the cost-ceiling items for a time period that had those  
8 codes that were appealed, yes.

9 CHAIRMAN O'HARA: That would tell you --  
10 that would match pretty much this format that he's listed  
11 here?

12 MS. ROSIE: I don't know that.

13 MS. PASHKOWSKI: It may not because if Hal  
14 is only getting responses from ten consultants and,  
15 perhaps, all ten of those have the same issue but the  
16 universe of consultants is 300 -- I'm not sure what it  
17 is -- who are appealing, their appeals may obviously vary  
18 in the numbers from the other 290. May make the issues  
19 that are the most -- technical issues that are most  
20 commonly appealed different than the ten people that are  
21 responding to Hal.

22 MR. GILL: Does anyone know how many  
23 consultants are actually doing UST work? Because I know  
24 it has gone way, way down. I don't know.

25 CHAIRMAN O'HARA: I don't know. From a

1 Commission standpoint, the issue of appeals as a general  
2 issue is very important. And you mentioned resource  
3 allocation. I can't think of anything that would be more  
4 of a benefit to both the Department and the stakeholders  
5 to reduce or limit the number of appeals.

6 I'm sure you are spending time. I know these  
7 guys are spending time. It seems to me before we can even  
8 study this as a Commission, there needs to be some common  
9 agreement as to what the biggest items that are causing  
10 appeals are. You guys need to speak the same language  
11 because their codes aren't matching your list.

12 So my recommendation would be just -- for what  
13 it's worth, I would entertain a suggestion that they had  
14 to go through the database and list the top five, ten  
15 appeals, whatever you feel is appropriate, that covers a  
16 large majority of the dollar value. And then have the  
17 subcommittee look at those and then try and apply these  
18 terms that you have, get down to the detail of what it is  
19 technically that you guys don't agree on because obviously  
20 they feel the frequency on water levels should be X and  
21 you feel it should be Y.

22 If we can consolidate those five issues down you  
23 just don't reach agreement on, maybe the Commission can  
24 take a position on those. That would settle the issue and  
25 at least get some guidance to the Department.

1                   MS. DAVIS: Mr. Chairman, I would just like  
2 to ask what a reasonable time frame would be if we are  
3 going to pull out by cost ceiling, which I think is what  
4 we are talking about. Do you want to run it for a  
5 six-month period, or do you want it to match the appeals  
6 that you have done for the last three months? What's  
7 going to work? What do you recommend?

8                   MS. NAVARRETE: Actually, November is when  
9 we started really making some really, really good progress  
10 in SAF. So November would be a good time frame to start  
11 seeing what's being appealed since November.

12                  MR. GILL: That should be fine.

13                  MS. NAVARRETE: From November forward?

14                  MS. DAVIS: Does that work for the  
15 Commission?

16                  MR. TSIOLIS: I have a question. Is that  
17 going to be limited to technical issues or also financial  
18 issues?

19                  MS. ROSIE: We'll open it all up.

20                  MR. TSIOLIS: The greater question I have, I  
21 am just looking for the process here, are there no appeals  
22 ever that come forward regarding the requirements for  
23 showing financial need? Or why was that ranked at this  
24 number as opposed to this number for payment? Is that  
25 something you never see on appeals?



1                   MS. ROSIE: Currently, ranking is not  
2     appealable.

3                   MR. TSIOLIS: What about financial need,  
4     that kind of stuff? The stuff I have to show as financial  
5     need is enough because that's not appealable?

6                   MS. ROSIE: We don't receive any on  
7     financial issues.

8                   MR. TSIOLIS: You don't receive appeals on  
9     those issues? That's just not an issue.

10                  CHAIRMAN O'HARA: Documentation issues.  
11                  Ian, you had a comment.

12                  MR. BINGHAM: Yeah. Ian Bingham. I  
13     frequently make the comment that this is a very  
14     term-sensitive program. We're using the word "technical"  
15     and "appeals" really, I think, interchangeably. You have  
16     a technical component to an SAF application, and then you  
17     have the technical appeals under my section, which clearly  
18     has no SAF implication. It is a technical appeal and our  
19     determination regarding an SCR, CAP, or what have you.

20                  So I do believe that's also creating some  
21     confusion, especially when Hal refers to the technical  
22     appeals that Phil mentioned the last meeting. Those are  
23     technical appeals out of my section, not SAF related.

24                  So back to Ms. Davis's comment, if we are asking  
25     for information, let's know what we're asking for because

1 if you ask me for technical appeals, I will not be asking  
2 Judy any questions whatsoever because technical appeals to  
3 me are decisions rendered under my section.

4 CHAIRMAN O'HARA: Doesn't that generate a  
5 denial in dollar figures that Judy captures or not?

6 MR. BINGHAM: No. That's what I want to  
7 clarify.

8 CHAIRMAN O'HARA: It is more of a work-plan  
9 issue before the dollars are spent? Okay.

10 MS. DAVIS: Mr. Chairman, I have to do kind  
11 of the dumb person's version of this, so let me explain it  
12 my way. When we refer to "technical issues" in the  
13 corrective action section now, those are limited to  
14 technical documents, so SCRs, CAPs, closure requests, and  
15 work plans.

16 And then all of the other -- because we moved  
17 the technical review of work plans over under Judy's shop.  
18 That's where that marriage hooks up between the work plan  
19 costs and the cost ceilings and the financial review. And  
20 that's where most of the appeals are being generated now.

21 Does that characterize fairly, staff? It is  
22 technical documents in Ian's group, the corrective action.

23 MS. FOSTER: Mr. Chairman, I would also ask  
24 that if we are comparing DEQ's and the consultant's list  
25 of the top five things, that it be done in a timely

1 fashion. What I'm hearing from Hal is that this list that  
2 he gave out today is a year old, and maybe a lot of these  
3 issues have already been resolved.

4 MR. GILL: No. That's why they are on here.  
5 They haven't been resolved.

6 MS. FOSTER: They must have gone through the  
7 appeals process and a decision made. If somebody is mad  
8 with a decision, they keep bringing it up, the opinion has  
9 already been made. Why do we keep having to rehash the  
10 opinion?

11 MR. TSIOLIS: Because those opinions aren't  
12 being reported. We don't know what those opinions are.

13 MS. PASHKOWSKI: The owner-operator or the  
14 consultant who agree with the same issue knows what the  
15 issue is.

16 MR. TSIOLIS: That's true.

17 MR. GILL: I think not all of you were at  
18 the meeting this morning. If you look at those issues,  
19 many of those issues go right along with that report, too.

20 CHAIRMAN O'HARA: Is it too simple to think  
21 that there are issues such as frequency of sampling water  
22 level measurement where the consultants -- or group of  
23 consultants feel it should be once a week versus the  
24 Department, "I think that's just too infrequent" and that  
25 generates a lot of appeals? Is it that simple to think it

1 can be brought forward, decisions which you just don't  
2 agree on?

3 MR. GILL: I don't think it's that simple in  
4 that you can't bring site-specific issues because  
5 basically all that ends up, that's what this document --

6 CHAIRMAN O'HARA: How can a Policy  
7 Commission make general recommendations on these policies  
8 if they are all site-specific?

9 MR. TSIOLIS: That's my concern.

10 MR. GILL: That's why we are trying to come  
11 up with a process that we reach consensus on, to look at  
12 sites and based on site-specific data determine whether or  
13 not -- determine the frequency or sampling or the  
14 frequency of water level measurement.

15 CHAIRMAN O'HARA: I don't think that's  
16 appropriate. We are supposed to take general application.

17 MR. GILL: That's why we are looking at it.

18 MR. BEAL: He just stated what our position  
19 should be. You have determined it should be a  
20 site-specific determination, and that goes to the  
21 Technical Appeals Panel. It goes to the operation of it.  
22 It doesn't go to this Commission to be delineated. You  
23 have reached a conclusion. And the report this morning  
24 said good work is site specific, and you have to develop  
25 that. The one shoe fits all doesn't work.

1                   MR. GILL: Let me back up. The issue with  
2 groundwater sampling, groundwater measurement is we  
3 continue to get denials on groundwater sampling plans that  
4 we send in or we continue to get denials on work that was  
5 done for frequency of water level measurement, frequency  
6 of sampling. And different sites that you bring forward  
7 to the DEQ, you can show on this particular one we may  
8 have to do more frequent sampling. So -- so it is a  
9 site-specific issue.

10                  But if we don't come up with a plan that DEQ and  
11 the stakeholders can agree on, that this looks like this  
12 is a good way to determine based on site-specific issues  
13 that you need to do this kind of sampling and/or water  
14 level measurement, you will continue to get these denials  
15 because there are certain issues, certain sites where it  
16 is appropriate to continue sampling for free product. It  
17 is appropriate to sample for groundwater analyses based on  
18 receptors nearby or something like that.

19                  But where we are getting hit is that if we can  
20 come in and sit down or if it has already been  
21 predetermined that based on these site-specific  
22 conditions, DEQ would agree that that makes sense, then we  
23 wouldn't be always in appeal. But we are and we will  
24 continue.

25                  CHAIRMAN O'HARA: Gail.

1                   MS. CLEMENT: Gail Clement. Mr. Chairman  
2 and Hal, these -- just taking the first set of bullets  
3 here, these are issues that are ambiguous to the technical  
4 community right now. And what Hal's been trying to do, if  
5 I can explain this, is trying to get his arm around the  
6 number of variables that affect the agency's decision on a  
7 site-specific basis and put some kind of template together  
8 that says if you have these variables line up this way,  
9 then this is a rational approach for monitoring and water  
10 level measurements.

11                   And though you can't get to the exact site, you  
12 can more easily address the variables and come up with the  
13 system or a pattern that the regulated community can  
14 follow. And it is not the things that are covered under  
15 rule, and it is not the things that are covered under  
16 guidance. It is these interim periods that appear to be  
17 ambiguous. And the regulated community does not know how  
18 to operate in these interim periods between, for example,  
19 when they've submitted a corrective action plan but before  
20 it's approved. What are they supposed to be doing?

21                   And apparently, there are differences that come  
22 out of decision-making by the agency. And so they are  
23 trying to get their arms around some of these ambiguous  
24 items so that they can proceed in a measured fashion, and  
25 the agency doesn't have to always make a different

1 decision over the same set of variables. And that's what  
2 they're trying to do, is my understanding. And it is a  
3 worthwhile effort, in my opinion.

4 MR. TSIOLIS: Mr. Chairman, if I could  
5 further refine these. So, for instance, using --  
6 continuing to use water level monitoring, really what we  
7 are talking about is in some cases, the Department thinks  
8 there has been too many monitoring episodes. Maybe there  
9 was a couple that were not necessary. Whereas, the  
10 engineer thinks that no, there was a minimum number that  
11 was necessary to verify, let's say, monitored natural  
12 attenuation.

13 I am wondering what the experts at DEQ think.  
14 Is this type of question amenable to further templating  
15 guidance?

16 Joe, do you have any idea? Is the question of  
17 water level monitoring something that is more amenable to  
18 even more policy and rulemaking and guidance making?

19 MR. DROSENDAHL: Like we said, right now, we  
20 have very limited guidance on the frequency. And like  
21 Gail said, right now, we just have guidance for why you  
22 characterize your site. That's where our guidance stops  
23 with the frequency. That's only a very small portion of  
24 the whole corrective action process. And that's what, you  
25 know, the issue now is. It is like, okay, what could be

1 some generic guidance for those other time periods.

2 MR. TSIOLIS: I'm here as a lawyer from the  
3 community, but I used to do eight years worth of  
4 underground storage tank work. I know when I was  
5 operating under the state that I was working in, we had  
6 something similar to the SAF and we had this exact same  
7 issue. I would err on the side of caution and do fewer  
8 monitoring episodes unless my client was ready to eat the  
9 cost of one too many for purposes of speeding the process  
10 forward. That's a business decision my client had to  
11 make.

12 Personally, I'm worried that this kind of  
13 determination is not amenable to anything other than a  
14 Technical Appeal Panel going -- passing it to a formal  
15 level and going to OAH. It is such a case-specific issue.

16 MR. GILL: Let me move on to the next point,  
17 which is what this is all about. There aren't any  
18 handouts to this because we are not final. To expand on  
19 what Joe said -- And thank you, Gail, for explaining what  
20 I couldn't.

21 CHAIRMAN O'HARA: He may have another  
22 comment. I don't know.

23 MS. CLEMENT: I just wanted to say,  
24 Mr. Chairman and George, these are the ambiguous periods  
25 of time and there isn't good guidance. And I am a



1 technical profession, and I was on the TAP. And I think  
2 you could help the regulated community by giving some  
3 measure of certainty about what's expected if it's not  
4 addressed in rule and expanding your guidance to cover  
5 these ambiguous periods of time.

6 If everything operated according to the time  
7 periods, great. But in this program, we all recognize  
8 that the time periods are not met by either the agency or,  
9 in some cases, the regulated community. So this is, I  
10 think, what Hal has really been trying to do.

11 CHAIRMAN O'HARA: Go ahead.

12 MS. PASHKOWSKI: I have not been attending  
13 your technical subcommittee meetings. And, Gail, I'm not  
14 sure that the issue is limited to the ambiguous periods of  
15 time where you don't have guidance. From the program's  
16 attorney's standpoint, the types of appeals that appear  
17 common to me are when you have guidance that talks --  
18 refers to the characterization phase.

19 So I'm not sure where this parking lot issue  
20 falls, if it is really just in that ambiguous no-guidance  
21 area or if it's the agency, "Yes, you have guidance but we  
22 don't agree with it," period.

23 MS. CLEMENT: If I may respond. At least  
24 the agenda item I have paid attention to in the  
25 subcommittee, because I like to prioritize and get things

1     done, is the first agenda item. It seems from the  
2     discussion I participated in, which haven't been very  
3     extensive, that this was more the ambiguous stage rather  
4     than pieces where we've given you guidance and you just  
5     don't want to follow it. Some of these other items, I  
6     really don't know.

7                     CHAIRMAN O'HARA: Just for my edification,  
8     conceptually, what would you envision, a recommendation  
9     from the full Policy Commission in the form of a  
10    recommendation to, I guess, the director or to the  
11    legislature? Give me an idea hypothetically what that  
12    recommendation -- form that would take? Would it say, We  
13    want the director to do what, to provide guidance? Will  
14    we give him specifics, We want the guidance to be this  
15    specific on groundwater sampling and monitoring? Do we  
16    spell out how frequently? Just give me an idea what you  
17    want the Commission -- how it would look in the end  
18    product.

19                    MR. GILL: To follow along with what Gail is  
20    saying and to answer Barbara, and then I'll answer that,  
21    basically the -- what we have been working on in the  
22    subcommittee meetings is a groundwater sampling and water  
23    level measurement matrix that lists all the site-specific  
24    issues that we can think of on one hand, on one axis. And  
25    then it lists -- and then it lists weekly, monthly,

1     quarterly, semiannual, annual, monthly, whatever, all the  
2     different types of sampling scenarios you can come up  
3     with.

4             But it starts at -- the guidance right now says  
5     that you do two to four groundwater sampling events during  
6     characterization, and then you stop and sit on your hands  
7     until the SCR is reviewed. And then you send in a CAP,  
8     and it is reviewed and it's approved. And in that CAP is  
9     the groundwater sampling.

10            And none of this has been finalized or anything.  
11     But I did a time frame looking at all the time frames.  
12     And basically, once you turn an SCR in -- this is meeting  
13     all the DEQ time frames -- if they were to meet to the day  
14     their time frames -- and I don't think I included the  
15     turnaround time of the consultants meeting the 45 days or  
16     whatever. But it includes 90 days for DEQ to review the  
17     SCR and, if there are no deficiencies, 120 days for the  
18     CAP to be prepared, and the other 120 days for DEQ to  
19     review the CAP, if there are no deficiencies, the CAP can  
20     be implemented. That has been 300 days since the last  
21     sampling. That's the absolute best case, which will  
22     never, ever happen.

23            And so -- 300 days where we're sitting on a site  
24     and this is -- And there are many sites right now where we  
25     are sitting on sites for two years with no CAP. We have

1 no idea what's in the groundwater. That's what Paul was  
2 talking about this morning. He went and sampled the sites  
3 and found ten of them had free product.

4 So what we are trying to do is -- That's the  
5 ambiguous period. Once we reach the SCR, what do we do?  
6 If you happen to know your site has -- it has got free  
7 product, it has high contamination concentrations,  
8 substantive utilities, receptors on or adjacent to the  
9 site, you add those all up and if they happen to be -- if  
10 you happen to have every one of those, you are going to  
11 have to have weekly sampling until you determine whether  
12 or not you have vapors going into the receptor off-site or  
13 on your site.

14 As soon as you determine that, you drop down  
15 into another one, a lower one. And in many cases, you can  
16 already put yourself down here in the quarterly or  
17 semiannual because you have already got that data. It is  
18 based on risk.

19 Ultimately, once we have discussed the matrix  
20 and we are trying to come up with an easier way to do it,  
21 because I went crazy trying to do this one and trying to  
22 put it into a database, which is what it is -- I tried to  
23 stick a database -- a two-dimensional thing and it drove  
24 me nuts.

25 Then we would bring with consensus, hopefully,

1 to the Policy Commission, say, We would recommend that the  
2 Department and the director adopt this matrix that DEQ and  
3 consultants can use to determine on their site-specific --  
4 their site-specific issues. Once we reach this, the SCRs  
5 turned in, this is what we do from this point on, waiting  
6 for it to get through the review process.

7 And the key thing we pointed out -- and I have  
8 got the text written out. It hasn't been reviewed by  
9 anybody yet, so I haven't sent it off to DEQ. The key  
10 component is we are definitely not trying -- we don't  
11 want -- this isn't carte blanche to go out and sample all  
12 you want because it is the consultant's responsibility to  
13 say, Okay, as soon as you know that you have -- this isn't  
14 an unknown anymore, you know that; and, therefore, based  
15 on that, you drop down to the next one, it's your  
16 responsibility to do that. You're held to that because  
17 this has got to be accepted by everybody. If you meet  
18 these criteria, this is what you should do. You have to  
19 reevaluate, which is what DEQ is doing now in their site  
20 classification. You reevaluate every time you get new  
21 data. That's what ultimately I would see bringing to the  
22 Policy Commission, is the recommendation to adopt the  
23 matrix.

24 CHAIRMAN O'HARA: Similar to reviewing those  
25 corrective action rules, to the extent it is a consensus

1 document, I can see us --

2 MR. GILL: We are not going to be bringing  
3 site-specifics into it.

4 CHAIRMAN O'HARA: To the extent there are  
5 differences, how do we as nonexperts say it should be two  
6 weeks instead of four weeks, whatever your matrix --

7 MR. GILL: You wouldn't be. It isn't based  
8 on any site. It is just a list of conditions. And then  
9 if you happen to meet those conditions, then this is where  
10 you are going to go. And what makes the high risk -- I  
11 could not think of any site that would fall in the first  
12 one. Actually, someone at the last meeting said they  
13 actually did have two sites that they felt would.  
14 Actually, it was someone from DEQ said they thought he had  
15 two sites that he thought would go in that first one. I  
16 couldn't think of any.

17 It is really based on unknowns, and you  
18 really -- once your characterization is done, you should  
19 have very few unknowns; so you know automatically. If it  
20 ends up while I'm waiting for it to get through this  
21 process of characterization, review of the  
22 characterization, the CAP, and everything, under the  
23 sample semiannual, that way we'd know whether or not it is  
24 changing because DEQ comes back after a year and says,  
25 well, we can't review your CAP because we don't have the

1 latest groundwater data.

2 CHAIRMAN O'HARA: Theresa.

3 MS. FOSTER: Mr. Chairman, I'm still  
4 concerned that the agency and the stakeholders are trying  
5 to make guidance documents and matrix law or regulations,  
6 and they're not. They are just a recommendation of what  
7 to do.

8 I would like to give a different opinion in  
9 terms of what Hal stated on a site in which you are  
10 waiting for the corrective action to be processed or the  
11 site characterization report. Based on my own experiences  
12 and having gone through that process, I don't see a  
13 problem in terms of informal or formal appeals as those  
14 issues being up there at the top of the list. My informal  
15 appeals are based on other items. It is not my sampling  
16 frequency or whether I sample or not.

17 So I would just like to put a different opinion  
18 on the table that for some owner-operators, there are  
19 concerns about informal appeals; but we just don't stop  
20 work just because the corrective action took two to three  
21 years to get approved. You continue on with your work.  
22 You make a good judgment call of how often you sample.

23 I don't want a guidance document or a matrix  
24 that says you will sample this amount. That's why I hire  
25 consultants for their expertise. They make those calls.

1 And if one consultant is sampling three times as many  
2 times what another is sampling, then I would tell that  
3 owner-operator find somebody who has -- can make a  
4 judgment call that's agreeable with DEQ. I just have a  
5 different opinion.

6 MR. GILL: The only reason I am presenting  
7 this, this is just what we are basically discussing at the  
8 subcommittee at this point. And I guess my only answer to  
9 Theresa, Theresa, this definitely isn't saying you will do  
10 this. It is up to you, whatever you want to do on your  
11 site or anyone.

12 Basically for people that do decide they -- on  
13 their site they need to go out and continue sampling,  
14 this -- the whole idea with this is as long as you're  
15 meeting these guidelines, then it should be acceptable by  
16 DEQ. If you want to do three times that, it's not going  
17 to be acceptable. If you want to do less than that, you  
18 know it's going to be acceptable.

19 It was really to protect the owner-operators  
20 that had sites that were really different and for whatever  
21 reason require further sampling or water level  
22 measurement. That was the point behind it.

23 And the UST -- the next point, the UST release  
24 confirmation, we're just waiting for DEQ to -- I know that  
25 there was -- there were written comments sent in, I think,



1 over a month ago now. We're just waiting for DEQ to do  
2 whatever they are going to do with the confirmation  
3 policy.

4 CHAIRMAN O'HARA: Any comments or questions  
5 from members of the Commission on the technical  
6 subcommittee update?

7 We've got a speaker slip from Mr. Kelley with  
8 Tierra Dynamic on Item 5.

9 MR. KELLEY: I'm good. Thank you very much,  
10 Mr. Chairman.

11 CHAIRMAN O'HARA: Item 6, administrative  
12 case Law Policy Number 0132.000 regarding the backlog of  
13 appeals. This item is on the agenda. It was on the  
14 agenda last week -- or recommended to be on the agenda by  
15 a member of the public. I think everybody's gotten a copy  
16 of this.

17 The Commission decided at the last meeting to  
18 take a look at this. I'd ask either -- preferably someone  
19 from the Department to explain it or maybe the member of  
20 the public who brought it forward.

21 MR. MERRILL: Mr. Chairman, members of the  
22 Commission, my name is Fred Merrill. This came to my  
23 attention about four months ago, Mr. Chairman. And at  
24 that time, I looked at it and it appeared to be -- if  
25 utilized by the Department, could be a tool that would

1 assist them in managing the administrative appeal docket  
2 more efficiently.

3 And when it came to my attention, I contacted  
4 Steve Burr, since if you'll look under "Responsibility" on  
5 the bottom of the page, it says it's the Office of  
6 Administrative Counsel responsible for implementation of  
7 the policy. Now, I understand that at the time that it  
8 was done, which was back in February of '98, that Mark  
9 Santana was the administrative counsel. But this is  
10 policy that was -- at least it was adopted in February of  
11 1998 when Russ Rhodes was the director and it was signed  
12 off on by the division directors including the deputy  
13 director and then Mark Santana.

14 And so I contacted Mr. Burr about four months  
15 ago asking him for some information to find out whether or  
16 not the policy had ever been implemented. And I never  
17 received a response from Steve. Then about three months  
18 ago I, again, discussed it with Steve at a Policy  
19 Commission meeting; and he said he would look into it.  
20 And, again, I did not receive a response from Steve.

21 And about two months ago, I sent a letter to the  
22 director -- to Director Owens with the policy attached  
23 indicating to the director that I was going to request  
24 that it be put on the Policy agenda for discussion. And I  
25 never received a response from the director.

1           And because this is a -- it is an agency-wide  
2 policy, I don't know necessarily where -- whether it  
3 should have been something that should have been run by  
4 the Commission. But since -- I would imagine without  
5 having specific information that the UST appeals  
6 constitute a vast majority of the appeals through the  
7 agency, that this would have been something that would  
8 have been at least submitted to the Commission for  
9 discussion.

10           And if you'll look under "Purpose," the purpose  
11 of the policy is to ensure that administrative cases are  
12 resolved in a speedy and efficient manner. And then the  
13 policy says, "It will address appealable agency actions  
14 and administrative orders that are not resolved within six  
15 months of the filing of the appeal." This says,  
16 "Longstanding cases will be dismissed from the  
17 administrative hearing docket and/or resolved by the  
18 director and then removed from the administrative case  
19 log."

20           The next page under the "Procedures," the first  
21 two are basic administrative acts -- administrative acts  
22 having to do with notices and failure to respond. But  
23 Number 3 is -- should be something in there for  
24 discussions through this Commission. And that is, it  
25 says, "On a quarterly basis, the OAC case administrator

1 will review with the administrative counsel those  
2 administrative matters that have not been resolved within  
3 180 days of the filing of the appeal."

4 Everyone can read that. And then it goes on to  
5 say what will happen to those cases that are not resolved  
6 within that period of time and are sent to the director by  
7 the administrative counsel, and then the director will  
8 take specific action.

9 And, again, when it came to my attention, it  
10 seemed like this could be something, again, a tool, that  
11 could be used by the agency that would assist in an area  
12 where there is a serious issue of resource allocation.  
13 And that's why I brought it before the -- this Commission  
14 in hopes to get some kind of discussion from the  
15 Department.

16 CHAIRMAN O'HARA: Let me just understand.  
17 If I can ask a question. This deals with appeals that  
18 have been on the books for six months or more?

19 MR. MERRILL: Apparently, that's what it  
20 says.

21 CHAIRMAN O'HARA: Is that a problem right  
22 now?

23 MR. MERRILL: I don't know.

24 MS. PASHKOWSKI: Statutorily, the Office of  
25 Administrative Hearings must set the hearing within 60

1 days, and they do that automatically. They set the  
2 hearing within 60 days. And OAH, the Office of  
3 Administrative Hearings, is very reluctant to continue  
4 those hearings, extremely reluctant in continuing those  
5 hearings, not even upon stipulation of both parties. I  
6 mean, they deny them outright. So a lot of these hearings  
7 proceed within the 60 days.

8 When you have Technical Appeal Panel members and  
9 scheduling that you have to accommodate with people who  
10 volunteer their time to sit on the panel, of course, the  
11 judges are more prone to consider their schedules and work  
12 around it. But if it's not a Technical Appeals Panel  
13 case, they are pretty strict.

14 MR. MERRILL: Mr. Chairman, Barbara, is this  
15 a policy, then, that was not really necessary? Maybe it  
16 was more necessary at the time that it was approved but  
17 not necessarily necessary for implementation?

18 MR. TSIOLIS: I would agree with that. I  
19 drafted this.

20 MR. MERRILL: You did a wonderful job.

21 MR. TSIOLIS: This was -- just for  
22 clarification, this came -- this really was adopted, this  
23 policy, a year and a half, two years after OAH was  
24 established before the informal appeal process was even  
25 created.

1           At that time, people didn't really know what the  
2   appealable agency action statute was all about, that they  
3   had rights to appeal. And a lot of times they didn't  
4   respond to their return receipt requested on either their  
5   notice of appeal or OAH's scheduling notice. And it was  
6   just on the books.

7           And we -- at that time, we had something, like,  
8   30, at any given time, notices of appeal that were not  
9   being processed because people weren't returning their  
10   return cards and they didn't know what their rights were.  
11   This was just a way to really clean that up.

12           Now that there is an informal appeal process for  
13   SAF and UST, at least for those two programs, when it gets  
14   escalated pretty much, the parties are aware. Also, with  
15   respect to OAH generally, people are much more  
16   sophisticated about their rights and are aware of them.  
17   My sense is -- without seeing the numbers currently, is  
18   that probably this policy has somewhat less utility than  
19   it did when we adopted it.

20           MR. MERRILL: The only reason I kept  
21   hounding on it is because I didn't know. I never received  
22   a response from anybody to tell me one way or the other.

23           CHAIRMAN O'HARA: Any comments, questions,  
24   on this issue?

25           MS. CLEMENT: Just one question, and it is

1     probably going to have to be answered by Barbara.   How  
2     much delay are you getting because you can't get a panel  
3     for some of the hearings?   Are you having problems with  
4     that now?

5                   MS. PASHKOWSKI:   It's -- Let me try it this  
6     way.   It is a little difficult right now to get a minimum  
7     of three panel members.   We are seeing -- I saw one  
8     yesterday where the chairperson of the panel informed OAH  
9     that a panel could not convene for a specific hearing, so  
10    it is a little bit difficult.   I think there are still  
11    only five panel members to draw from at this point in  
12    time.   And I don't even know if the two alternates have  
13    been appointed or not.   So you have maybe at most seven  
14    people.   So yes, it's -- there are occasions when hearings  
15    are going to be bumped because the panel cannot be  
16    convened.

17                   MR. MERRILL:   With that in mind,  
18    Mr. Chairman, Barbara, if -- because TAP was not statutory  
19    at the time that this was approved, if you can't get a TAP  
20    panel within that period of time, would this policy then  
21    come into play?

22                   MS. PASHKOWSKI:   I can't answer that, I  
23    don't think.   I'm not sure I want to.   I think I'll leave  
24    it there.   I'm not sure I want to try and answer that  
25    question.

1           It seems to me that each party, I'm talking  
2 about DEQ and the appellant, has certain procedural  
3 rights. And when I read this, quite honestly, I thought  
4 "Yeah, I like this." It says, if not resolved within six  
5 months, dismiss it. I don't think the appellants would  
6 appreciate that. So I'm not sure how that would work,  
7 quite frankly. And perhaps this is something that the  
8 agency needs to look at closer to see if it needs to be  
9 revamped or repealed.

10           MR. MERRILL: Thank you.

11           CHAIRMAN O'HARA: Any other comments or  
12 questions?

13           MS. CLEMENT: One last question. I  
14 apologize. Mr. Chairman and Barbara and Shannon, is there  
15 any remote possibility that the number of panel members is  
16 going to be statutorily changed this year or any UST  
17 changes will be in the next legislative session?

18           MS. PASHKOWSKI: Next legislative session  
19 being next year?

20           MS. CLEMENT: Yeah, 2004.

21           MS. PASHKOWSKI: I don't see -- House  
22 Bill 2423 was withdrawn, and that did have a provision to  
23 increase the number. So that's not on the books obviously  
24 at this point in time. I would hope that either the  
25 regulated community or DEQ would move forward next year



1 and get the number increased.

2 MS. CLEMENT: Thank you.

3 CHAIRMAN O'HARA: Shannon.

4 MS. DAVIS: Mr. Chairman. Gail, the  
5 director has been very clear about the first thing he's  
6 doing is taking on an internal review. And I think we've  
7 already spent six hours with him and several long  
8 briefings. I'm trying to unpack the whole program for  
9 him. He definitely wants to -- after the internal review,  
10 the stakeholders will be involved; and he wants that to be  
11 a very inclusive process. And he knows that the Technical  
12 Appeals Panel is an issue that needs to be dealt with. So  
13 for that to...

14 MS. CLEMENT: Thank you.

15 CHAIRMAN O'HARA: Any other comments or  
16 questions?

17 MR. PEARCE: Public comment?

18 CHAIRMAN O'HARA: You've got to get a  
19 speaker slip. Fill one out. Go ahead.

20 MR. PEARCE: Let me respond to the question.  
21 There is no way to increase the number of panel members,  
22 at least the way I read the statutes, without legislation.  
23 I think since the statement was made the legislation was  
24 withdrawn, it is only fair to point out it was withdrawn  
25 despite some strong efforts to at least get the technical

1 appeal process changed. But those efforts just weren't  
2 going to happen as far as the agency was concerned this  
3 year.

4           So it wasn't -- the agency's problems weren't  
5 with the technical appeals aspect of the bill but with  
6 other aspects of the bill. So -- And I would just remind  
7 DEQ that there is no way to change the process -- the  
8 technical appeals process without changing statutes. So  
9 if there is any chance, even at this late date, that the  
10 Department would even entertain just that one issue in a  
11 bill that's still active at the legislature, we would  
12 implore you that's the way to increase the number of TAP  
13 members and, perhaps, institute a process that's more  
14 streamlined than the process that exists right now that  
15 TAP members are very, very unhappy with.

16           CHAIRMAN O'HARA: Okay. Quick comment?

17           MR. MERRILL: Mr. Chairman, Shannon has a  
18 position on that. Maybe what you said is all you have  
19 been instructed to say, and that is the director wants to  
20 complete this internal review first before he makes any  
21 recommendation as to legislation. But do you know if the  
22 Department has come to an opinion as to whether they want  
23 to increase the TAP members?

24           MS. DAVIS: Mr. Chairman, I will go on  
25 record as saying the director is opposed to any

1 legislation in all forms this year.

2 CHAIRMAN O'HARA: Okay, great. Any other  
3 comments or questions?

4 Moving on to Item 7, discussion of agenda items  
5 for next month's Commission meeting. Item A is the annual  
6 report. It is April, and we are still talking about the  
7 2002 annual report. I know we have a draft. I'm going --  
8 We've had it -- Hal and I have agreed to meet with Al  
9 Johnson, finalize a few comments, and distribute that  
10 draft to members so at the next meeting it is my  
11 expectation to have a vote to get that approved.

12 Any comments on A? Questions?

13 MS. MARTINCIC: Will that be distributed?

14 CHAIRMAN O'HARA: Yeah. That's why I wanted  
15 to make some quick changes to it. Hal and I -- we have to  
16 schedule a meeting with Hal and Al.

17 Any other comments?

18 Item 7B, requests for top three or five issues  
19 for the Policy Commission to focus on during the remainder  
20 of 2003. And I got this idea, I believe, from Hal. Also,  
21 in discussions on the annual report, there is a section in  
22 there that we address the Policy Commission mandates. And  
23 we describe to the legislature those steps we took during  
24 the year to address those mandates. Some of them we just  
25 don't get to.

1           So I wanted the Commission members to focus and  
2 maybe come back to this Commission next meeting with their  
3 top three, five issues as it relates to those mandates so  
4 that we can prioritize our time as a Commission and  
5 address some of those mandates and have some  
6 recommendations for the legislature and include those in  
7 our next year's annual report.

8           I know I got one from Theresa Foster which is a  
9 very specific mandate. It spells out in statute that we  
10 should make recommendations on phase-out. And we have  
11 taken that up several times in the past few years. And  
12 actually, the subcommittee made recommendations to the  
13 full Commission. There just wasn't -- it didn't move any  
14 further than that. That's one issue, I think, that she's  
15 brought up that we may agree next meeting as a Commission  
16 to study.

17           And it is my expectation that if we can kind of  
18 agree as a Commission on three to five issues, we can make  
19 assignments to these subcommittees to study those issues  
20 and bring back recommendations to the full Commission.

21           Any comments, questions, on Item B? Theresa.

22           MS. FOSTER: I was a little bit startled  
23 when I looked at the agenda item -- or the agenda for  
24 today's meeting and an item that I had submitted that I  
25 wished to be on the agenda wasn't there. So I'm real

1 concerned that based on maybe the politics of this  
2 Commission determines what is placed on the agenda and  
3 what is not placed on the agenda. And that bothers me a  
4 little bit.

5           So for the record, I would like the Commission  
6 to evaluate phasing out the SAF program for all new LUST  
7 cases reported after January 1st, 2005. This would not  
8 impact current cases that are being investigated and  
9 remediated. This is one of the Commission's charges, is  
10 to evaluate, recommend recommendations of dates to phase  
11 out the assurance account and transfer the responsibility  
12 for corrective action costs to the private industry --  
13 insurance industry.

14           Since the fund was primarily established to help  
15 small owner-operators of USTs who couldn't afford  
16 clean-ups or insurance be in compliance with LUST  
17 regulations and manage the investigation and remediation  
18 of LUSTs, I think that this Commission should request a  
19 report from ADEQ listing all the current owner-operators  
20 who are either applying or awaiting payment and determine  
21 how many of them represent the small owner-operators.

22           The report should also include a listing of what  
23 forms of insurance each of these owner-operators currently  
24 have. If the only individuals submitting applications or  
25 awaiting for payment are large corporations,

1 organizations, that are either insured or self-insured,  
2 then the SAF fund for new releases should be phased out.

3 Maybe the Commission should request from ADEQ a  
4 report on the type of owners who have reported new  
5 releases in the last two years and whether or not these  
6 new releases have submitted SAF applications to the fund.  
7 The number of new releases may be so small and their  
8 clean-ups very inexpensive, that it may no longer be an  
9 issue.

10 The upgrades were required in December of '98.  
11 It will be six years by the time we hit 2005 since they  
12 went into effect. If the tanks were installed and  
13 operated properly, we shouldn't see any problems with  
14 spills.

15 Maybe this Commission should request that DEQ  
16 evaluate other state programs that have established  
17 programs for small owner-operators who may not be able to  
18 afford insurance or volunteers and have a state lead  
19 program for their clean-up. The SAF fund should not  
20 continue forever. Thank you.

21 CHAIRMAN O'HARA: Any comments, questions?

22 That's a specific issue. Would the Commission  
23 like to take up phase-out at the next meeting or send that  
24 to a subcommittee?

25 MS. CLEMENT: Yes, I would definitely.

1                   CHAIRMAN O'HARA: I think obviously it is.  
2   There wasn't any --

3                   MS. FOSTER: Can ADEQ provide us with  
4   documentation on some of the issues that I addressed?

5                   MR. TSIOLIS: I don't think we have to go to  
6   the subcommittee to get a report like that.

7                   MS. FOSTER: We are just delaying it month  
8   after month, and to me it is a major issue.

9                   MR. TSIOLIS: It is more than a major issue.  
10   We've got no choice but to consider that. It's part of  
11   our mandate.

12                  MS. CLEMENT: It is fundamental.

13                  MR. GILL: We came up with a number before.

14                  CHAIRMAN O'HARA: We came up with dates. We  
15   made a specific recommendation. Instead of reinventing  
16   the wheel and starting from scratch -- and I'm not saying  
17   data wouldn't be helpful -- I would like to go back to  
18   where we left it off because we had at least four meetings  
19   on this and had a lot of good input. I'd hate to just  
20   discount everything the work people put into that because  
21   we had clear definition of what phase-out meant and it  
22   didn't mean phasing out the tax. It specifically meant  
23   phasing out eligibility to the fund. We actually came up  
24   with dates, and so I don't want to discount a lot of work  
25   that has already been done.

1           I would like to have the subcommittee bring it  
2 to the full Policy Commission and bring forward those  
3 recommendations and have full discussion with new  
4 information, if that's appropriate.

5           George.

6           MR. TSIOLIS: I didn't realize there had  
7 been that work done. Is there a way to distribute the  
8 results of that?

9           CHAIRMAN O'HARA: I've got it all. I will  
10 distribute that.

11          MR. TSIOLIS: Thank you.

12          CHAIRMAN O'HARA: Theresa, just to disabuse  
13 you of the notion there was politics involved, I responded  
14 to your e-mail with a e-mail describing just exactly what  
15 I said and that my recommendation, instead of putting it  
16 on the agenda for discussion, that we keep it as -- This  
17 is part of a bigger issue. We need in new items, if they  
18 are substantial, we need to notify everybody in this  
19 Item 7, which is going to change numbers, but it is  
20 basically the issue of what's on the agenda for next  
21 meeting so it puts everybody on notice, you have got a  
22 month for this issue to come up.

23          It gives DEQ ample time to get their  
24 information, distribute that information so we come into  
25 that meeting fully prepared to discuss it rather than as



1 it was this time, I got it out late. The agenda came out  
2 on Monday. Nobody would have been prepared to discuss it.

3 That brings a bigger topic. Let me make sure I  
4 am clear on that. If there is agenda items that you want  
5 on the agenda, it is my recommendation we ferret them out  
6 at this meeting so everybody's -- it is not just my  
7 decision and we have discussion, but the members say,  
8 "This is an item we think we need to discuss." So it  
9 gives me some direction to putting it on next time, and it  
10 notifies everybody.

11 If it comes up in the last week or so, if it is  
12 something simple, I can put it on. If it is something  
13 that's going to require discussion, I think we ought to  
14 have plenty of notice. That's certainly an issue I think  
15 we ought to have on the agenda and take it up.

16 MS. FOSTER: Mr. Chairman, can DEQ provide  
17 some documentation? If we are going to talk about it next  
18 month, it would be nice to see what the numbers look like.  
19 I'm real curious on any new LUST cases that have been  
20 reported in the last year or two, if any of them have  
21 applied for State Assurance Fund reimbursement and what  
22 magnitude are they? Are we talking about a couple  
23 thousand dollars? Are we talking a half million dollars,  
24 that type of thing?

25 And also to know what other states are doing in

1 terms of phasing out of their own programs because  
2 Patricia Nowack, when she was here, knew everything about  
3 what other states were doing. If another state has a  
4 successful program, we need to follow their pathway so  
5 that if we need to take care of the owner-operators or  
6 their volunteers, maybe have a state lead-run program.  
7 That would be nice to have some numbers available.

8 CHAIRMAN O'HARA: Myron.

9 MR. SMITH: Can we also request that DEQ  
10 supply the new members with a copy of the actuarial study  
11 that was done previous? I think that would be some --

12 CHAIRMAN O'HARA: Yeah.

13 MR. SMITH: It is a little old. But it  
14 gives a flavor of where we are giving and what the future  
15 looks like for the fund.

16 CHAIRMAN O'HARA: I think it is about a year  
17 and a half old. Actually, that jogs my memory a bit. The  
18 discussion on phase-out, we did bring recommendations  
19 forward. And there was great concern amongst some members  
20 of the Commission about several things: One was MTBE, the  
21 other was RBCA, how those were going to impact  
22 owner-operators. And I think we decided as a Commission  
23 to take a look at this actuarial study, and that was kind  
24 of an impetus for doing an actuarial study.

25 The results of that actuarial study, while I

1 think they're subject to change, said that the program is  
2 taking care of itself financially in that it would -- by  
3 the year, I believe, 2013, there would be no more of a  
4 backlog. So it kind of took away, I think, some of the  
5 push for a phase-out from a financial standpoint, not that  
6 it is not appropriate otherwise. So I think we just said,  
7 "We'll monitor the program ongoing to see if phase-out  
8 becomes necessary."

9 It is a good time to take a look at it again.  
10 I'll distribute to everyone our prior recommendations. If  
11 there is specific data anyone would like to see as part of  
12 that, I would recommend -- Who should we recommend that to  
13 go to, Al Johnson?

14 MS. DAVIS: For what?

15 CHAIRMAN O'HARA: Any information such as  
16 Theresa is asking for that would be helpful in the  
17 discussion. Should we contact Al?

18 MS. DAVIS: If you put it through me, I  
19 think that would work the best. Thank you. We'll also  
20 get, Myron, copies of the actuarial study to the new  
21 members. Take care of that.

22 CHAIRMAN O'HARA: Roger.

23 MR. BEAL: Is there any way to get some sort  
24 of feel for what the ramifications of eliminating the fund  
25 might be financially in terms of increased insurance

1 premiums given the unknowns of MTBE, RBCA?

2 CHAIRMAN O'HARA: That might happen because  
3 of other reasons of this latest insurance decision.

4 MR. TSIOLIS: It may already be done and be  
5 nullified.

6 MR. BEAL: I think that's part of the  
7 action.

8 CHAIRMAN O'HARA: As part of that actuarial  
9 study, we did try to ask, if we could -- ask them to take  
10 into account certain phase-out dates. And I think if my  
11 memory is right, they did not do that. It was going to be  
12 an extra supplemental study that they would had to have  
13 gotten funding for. And so we may take that up as a  
14 recommendation to take a look at that. We don't have data  
15 for that.

16 MR. BEAL: No. I guess I'm asking: Is  
17 there someone in the insurance industry -- If this has  
18 already been a determined issue then, it will be there  
19 right away and it won't have any effect after whatever  
20 goes.

21 THE WITNESS: Right.

22 MR. BEAL: If that's the case, then don't  
23 worry about it.

24 CHAIRMAN O'HARA: Andrea.

25 MS. MARTINCIC: I was just going to say if

1 materials were going to be distributed, I would like to  
2 have them, if we can, before the day of the meeting  
3 because just -- I mean, it is difficult to be prepared and  
4 discuss if you don't get the materials in time to review  
5 them.

6 MR. DAVIS: Mr. Chairman.

7 CHAIRMAN O'HARA: Shannon.

8 MS. DAVIS: Andrea, one of the things I  
9 would really like to see is the agenda get established  
10 seven, ten days out so that we can actually mail you a  
11 packet of the information so you would have time to study  
12 it. It is just a shifting of the culture of how all the  
13 time lines work both with the Commission and staff. But  
14 we are doing that. I think it is a great idea.

15 CHAIRMAN O'HARA: That's why I really would  
16 like to try to focus on next month's meeting at this  
17 meeting. And there may always be things that come up in  
18 the interim. But if we can really focus on this meeting  
19 what we will do in the next meeting, it gives everybody  
20 notice.

21 One other comment quickly I want to make, I was  
22 asked by Laurie when I send out agendas, I get circulated  
23 back agenda items, that those items don't get recirculated  
24 to everybody because that may be in violation of open  
25 meeting laws and just respond back to me. Just thought to

1 let you know.

2 Andrea.

3 MS. MARTINCIC: I just wanted -- I guess it  
4 is the next thing. I can wait. I was going to make sure  
5 about the date. Had we decided if we were going to go  
6 with the 30th?

7 CHAIRMAN O'HARA: If we can get a meeting  
8 room, what I will do is send an e-mail to everyone saying  
9 is the 30th okay with everybody?

10 MS. MARTINCIC: Should we know in the next  
11 week or so?

12 CHAIRMAN O'HARA: Yeah, next couple days.  
13 Gail.

14 MS. CLEMENT: One agenda item that I would  
15 like to see -- and I think we can put it out right now --  
16 is if the agency is going through an internal process  
17 about revamping the UST program, which will eventually  
18 become an external process, I would like to understand  
19 what the Policy Commission's role in that is and how  
20 these -- because we are going to be taking our priorities  
21 and the agency is obviously going to be looking at how  
22 they want to change the program, how these pieces fit  
23 together and how we can best support the agency.

24 MS. DAVIS: Mr. Chairman. Gail, thank you.  
25 Thank you for that. And I'm sure that folks at this table

1 are going to be asked to participate in the stakeholder  
2 process. And I think that the director is going to  
3 appreciate a perspective from the Policy Commission on  
4 what the Policy Commission believes the top issues are for  
5 the Commission.

6 CHAIRMAN O'HARA: So again, on Item B, just  
7 to finish up, if we can come to the Commission at the next  
8 meeting, everybody have their ideas along with phase-out  
9 and what other items we want to spend our time on the  
10 remainder of 2003.

11 Any other discussion on Item B?

12 Item 7C, discuss ADEQ staff training program per  
13 UST Policy Commission recommendation to director dated  
14 December 18. Hal, I am going to turn that over because I  
15 think that was your issue.

16 MR. GILL: Yeah, the recommendations that  
17 went to Director Owens on December 18th, one of the  
18 recommendations was that -- recommend the SAF and USTCAS  
19 develop a program to increase the baseline technical  
20 expertise of current and future employees of these  
21 sections, implement seminars with training provided by  
22 different consultants to increase the technical expertise  
23 of TRU and ADEQ USTCAS personnel, develop a technical  
24 competency -- we decided to do away with "evaluation."

25 But basically we recommended that there is a

1 number of different areas that the UST can use to increase  
2 activities because we understand the limitations that DEQ  
3 has as far as their hiring. And we understand that there  
4 is not going to be people with 8, 10, 12 years' experience  
5 that are going to be crawling all over each other to get  
6 to ADEQ to get a job, well, right now. It could happen.  
7 This has always been understood by the regulated public.

8 And what we are trying to do in the  
9 recommendations that came out is we were trying to present  
10 possibilities for increasing the expertise other than just  
11 sitting down and reading documents, which are a poor  
12 substitute for experience out in the field. One of the  
13 things we recommended was, as I said, different  
14 consultants, ASU personnel, and the like, do seminars.

15 I just wanted to know, because we're continuing  
16 to see problems. I mean, we go in there for hearings and  
17 I'm hearing this internally as well as with the  
18 consultants. And we will go into the hearing and  
19 they'll -- and someone -- like, Joe will be there. He  
20 will say, "We agree with that. We agree with that. We  
21 agree with that." We say, "Why are we here?"

22 If the people doing the initial reviews had the  
23 expertise that Joe had or had an ability to get that  
24 expertise through seminars or whatever, we can do away  
25 with a lot of appeal hearings; and the decisions can be



1     made upfront where they should be when it is being  
2     initially reviewed.

3             So what I wanted to ask is: What is DEQ -- has  
4     DEQ looked at anything -- any way to increase the  
5     training? And I would just wonder if DEQ can prepare us  
6     with what they are planning on doing as far as their  
7     training along the lines of these recommendations.

8             CHAIRMAN O'HARA: Theresa.

9             MS. FOSTER: Mr. Chairman, correct me if I'm  
10    wrong, but I don't remember this Commission as a whole  
11    voting -- a majority voting -- us voting on this issue. I  
12    thought there was a discussion that said if Hal wanted to  
13    present it to the director, that was fine. But I don't  
14    remember voting as a Commission and stating that was the  
15    Commission's recommendation.

16            CHAIRMAN O'HARA: Well, what happened is Hal  
17    in his subcommittee had come up with a very detailed  
18    three- or four-page list of recommendations.

19            MS. FOSTER: I remember it.

20            CHAIRMAN O'HARA: And I think the full  
21    Policy Commission kind of modified that a bit, that we all  
22    kind of got behind the concepts that was -- people should  
23    be well trained, I think was the way it was worded, more  
24    generic.

25            MR. GILL: This is what was voted on. And

1     there was three issues that were voted on, and this was  
2     one of them.

3                   MS. FOSTER: That went into detail that said  
4     how many hours and how much education was required?

5                   MR. GILL: It didn't say that.

6                   CHAIRMAN O'HARA: I just think it was  
7     some -- I can pull that back up for you, that  
8     recommendation. I may have it in my briefcase.

9                   MR. GILL: This is the letter here.

10                  CHAIRMAN O'HARA: Would you read that part  
11     of it?

12                  MR. GILL: That's just what I read.

13                  CHAIRMAN O'HARA: The follow up on that, I  
14     don't think we've ever gotten a formal answer back from  
15     the director on these recommendations. So maybe --

16                  MR. GILL: That's what I'm wondering, if  
17     anything is being done to increase the --

18                  MS. DAVIS: Mr. Chairman, if I could address  
19     this just from a high-level place, if you will. I think  
20     technical decisions are sometimes like lawyers and --  
21     Sorry, Barbara, sorry. I don't mean to disrespect you. I  
22     just mean that there is different opinions on the way we  
23     can approach things technically, so I want to say that.

24                  And the deeper I get into this program, the more  
25     that I see that. I think one of the things that we are

1     paying painful attention to and we are allocating our  
2     resources and organizing our resources in such a way that  
3     there is greater consistency in our technical decisions.

4             We were just in a meeting yesterday, two days  
5     ago, I don't remember, with Judy talking with the  
6     director -- the deputy director about we realize that  
7     consistency is an issue out of the agency. And one of the  
8     things that Judy is doing is organizing her folks so that  
9     she has senior people like Joe to make consistent  
10    determinations all the way along.

11            And I think that training and all those things  
12    are a great idea. Again, I want to remind the Commission  
13    that we have deployed resources in order to get the  
14    backlog down. Now we are dealing with appeals, and we are  
15    focusing on making as consistent technical determinations  
16    as possible. So we're aware that that's an issue, and  
17    that's how the agency is approaching it at this point. So  
18    we are aware of it, and we are approaching it through  
19    trying to make it as consistent as possible.

20            CHAIRMAN O'HARA: Is this committee  
21    satisfied, or do you want to see a discussion of this at  
22    the next meeting? Gail.

23            MS. CLEMENT: I have a follow-up question.  
24    Do you have a training program that when someone is moved  
25    to a new role, whether they are a new hire, these are the

1 things you need to know to review UST cases and you can  
2 check mark it? And then somebody is backing them up as  
3 they learn their new job? Do you have anything in place  
4 like that?

5 MS. DAVIS: Mr. Chairman, Gail, that's a  
6 really good question. And I think what I would like to do  
7 is to be able to present that to the Commission both on  
8 the corrective action side -- I certainly can't speak for  
9 Judy's side because I think she's received a lot of new  
10 resources. I'm sure that's on screen, and I think that's  
11 a good question. And we'll report back on the training.  
12 I think that's a good request.

13 MR. GILL: That's really what I was asking  
14 for.

15 MS. MARTINCIC: That goes back to -- we had  
16 a meeting over the summer, I think, last year sometime;  
17 and there was going to be a checklist through the process  
18 so that, like, everyone was on the same page of how the  
19 process went along. I would think that ties in with that  
20 whole concept of training. I don't recall if I would call  
21 it a training guidance document or whatever. It was a  
22 checklist we had talked about, I think, last year at one  
23 of the subcommittee meetings, I think.

24 MS. DAVIS: Mr. Chairman, I could put our  
25 staff on the spot on that, but I'm not going to. And

1 we'll report back next month on that.

2 CHAIRMAN O'HARA: Any other items on next  
3 week's meeting? This may be a very lengthy subject. Next  
4 month, excuse me. I did not get any speaker slips for  
5 general call to the public.

6 MR. PEARCE: I got one.

7 CHAIRMAN O'HARA: Mr. Pearce, what was  
8 yours, 8?

9 MR. PEARCE: I even wrote down what I was  
10 going to talk about. I'm learning. Can I ask some  
11 questions about the appeals statistics?

12 CHAIRMAN O'HARA: To whom?

13 MR. PEARCE: To Judy maybe.

14 CHAIRMAN O'HARA: As long as you feel -- if  
15 you are able to respond, fine. Otherwise, you can come  
16 back at the next meeting. No problem. Go ahead and ask  
17 your questions.

18 MR. PEARCE: There is the pie charts, and  
19 they specify the number of informal appeals log in the  
20 months of November, December, and January, right? Is that  
21 what this says?

22 MS. NAVARRETE: Yes.

23 MR. PEARCE: Then we look at the informal  
24 appeals on the next page, and that has the number of  
25 formal appeals filed from the number of informal appeals

1 filed during that month -- November, December and January?

2 MS. NAVARRETE: Yes.

3 MR. PEARCE: So when we say that there is 17  
4 formal appeals filed in the months of November, December,  
5 and January, is that the total number of formal appeals  
6 filed during that time frame or are those the number of  
7 formal appeals that are filed out of the body of informal  
8 appeals that were filed?

9 MS. NAVARRETE: Out of the body of informal  
10 appeals.

11 MR. PEARCE: So if I had an informal appeal  
12 filed in the month of January and there was a formal  
13 appeal filed from that informal appeal in March, that  
14 obviously wouldn't show up here, right?

15 MS. NAVARRETE: No, it wouldn't. I have to  
16 do a snapshot, John, a snapshot in time. That's the only  
17 thing I can get out of our database is a snapshot.

18 MR. PEARCE: I guess I am trying to get a  
19 grip on, that seemed like a low number of formal appeals.  
20 I would think there was more than 17.

21 MS. NAVARRETE: That seems like a low  
22 number? Thank you.

23 MR. PEARCE: Yeah. I'm just saying that. I  
24 don't think that's the total number of formal appeals that  
25 was filed during the months of November, December, and

1 January.

2 MS. ROSIE: If I could answer. Out of those  
3 17, 15 of them were from the informal appeals. There were  
4 actually two of those that went from the initial  
5 determination. There was no informal appeal and they were  
6 formally appealed, if that's what you're asking.

7 MR. PEARCE: Actually, what I'm asking is  
8 during the months of November, December, and January, do  
9 you know how many formal appeals were filed with OAH on  
10 DEQ UST matters?

11 MS. ROSIE: That's how many we have a record  
12 of.

13 MR. PEARCE: The total is 17?

14 MS. ROSIE: Correct.

15 MR. PEARCE: That's not just the formal  
16 appeals that were submitted from the informal appeals that  
17 were lodged during the months of November, December, and  
18 January?

19 MS. ROSIE: That's related to SAF  
20 determinations, correct. It doesn't include the  
21 failure-to-respond appeals which are identified  
22 separately, and it doesn't include technical appeals of  
23 UST determinations.

24 MR. PEARCE: Okay. So there is a total of  
25 17 formal appeals filed with OAH on cost issues,

1 nontechnical issues during the months of November,  
2 December, and January with OAH?

3 MS. ROSIE: According to our database.

4 MR. PEARCE: And then there was a number of  
5 additional technical appeals filed as well?

6 MS. ROSIE: Those aren't tracked through our  
7 database, so I wouldn't know that.

8 MR. PEARCE: This number isn't limited to  
9 just those informal appeals that were also filed in those  
10 three months. This is the total number whether it  
11 pertained to an informal appeal that was filed in  
12 November, December, or January or some informal appeal.

13 MS. NAVARRETE: This is a snapshot, John.  
14 And we are assuming -- there is an assumption here, that  
15 out of 75 informal appeals, we got 17 formal appeals.

16 MR. PEARCE: Can I just point out why what  
17 you just said is probably not accurate. When you file an  
18 informal appeal with ADEQ, you initiate a process that at  
19 a minimum takes 30 days and often takes 60 or longer  
20 before you're ready to file -- before you're able to file  
21 a formal appeal because you are going to have an informal  
22 appeal process before you find out if you're going to have  
23 a final determination from the agency. And then after  
24 that, you have 30 days to file the formal appeal.

25 So when you are comparing the informal appeals



1 and the formal appeals, that's probably not -- It is  
2 confusing to me, anyway. It is probably just best to say,  
3 hey --

4 MS. ROSIE: If we present them differently,  
5 it would be more clear for you?

6 MR. PEARCE: I think it would be more clear  
7 for anybody because to say out of 75 informal appeals  
8 filed during the months of December, January, and  
9 February, you had 17 formal appeals arising out of that,  
10 that looks to me like -- I think it looks to anybody like  
11 that means you have 17 formal appeals arising out of the  
12 same three months you had 75 informal appeals, and that  
13 doesn't make any sense.

14 I would be curious to know how many formal  
15 appeals are really lodged with OAH, both cost appeals and  
16 technical appeals, so we have a real grip on what the  
17 burden is on OAH during those months and not try to  
18 compare it to the informal appeals because that's a  
19 different issue. If you could compare the number of  
20 informal appeals that develop into formal appeals, that  
21 would be helpful. That's not what this does.

22 MS. ROSIE: Okay. Thank you.

23 CHAIRMAN O'HARA: Would the Commission like  
24 that clarification on future statistics? Do you  
25 understand that discussion?

1                   Andrea.

2                   MS. MARTINCIC: I would like to move that --  
3 I think maybe a little bit of what John is getting to  
4 is -- I guess, even when I looked at this, I didn't  
5 realize this doesn't include the failure-to-respond  
6 appeals.

7                   MS. NAVARRETE: Yes, it does.

8                   MS. ROSIE: They are listed separately. It  
9 didn't seem appropriate to include failure-to-respond  
10 appeals on pie graphs of determinations since we were  
11 appealing --

12                  MS. MARTINCIC: Where are they listed  
13 separately?

14                  MS. NAVARRETE: On the left. There was 31  
15 formal appeals for failure to make determinations. There  
16 was no determination made on it, so we can't include it in  
17 our determinations.

18                  MS. MARTINCIC: I guess the other thing I  
19 would like to say is on the corrective action workloads  
20 status report, if Ian could provide a similar sheet like  
21 this, I would feel like, then, we would have a more full  
22 picture of the whole program instead of just getting it  
23 from SAF. Have both sides kind of turning into the  
24 Commission the same format report. And then that way we  
25 can have a better picture, and that way when there is

1 discrepancies between what Hal is hearing in terms of  
2 corrective action, I just feel like it might help this  
3 situation and make the communication a little clearer.

4 CHAIRMAN O'HARA: You want to see all  
5 appeals?

6 MS. MARTINCIC: Yeah.

7 CHAIRMAN O'HARA: Not just SAF appeals.

8 MS. MARTINCIC: Right. You can keep them  
9 separated out, if you want, so that we can have it that  
10 way, but to have this same format and information on the  
11 other side.

12 MR. PEARCE: If it is too burdensome to do  
13 what we're all asking you to do, then let us know. I  
14 think it would be helpful to know how many of the informal  
15 appeals have all been to formal appeals. To do that,  
16 you've got to track the informal appeals and see if it  
17 ended at the informal stage or where they are graduating  
18 into the formal stage. That's kind of what we're all  
19 interested in, how well the informal process is working,  
20 not to say it is not working because it is DEQ's fault.  
21 It could be for a variety of reasons.

22 The second thing would be how many appeals are  
23 filed total with OAH, if we can kind of figure that one  
24 out too. If that's too much work, let us know.

25 I'm ready to move on to my second point. It is

1 much shorter.

2 CHAIRMAN O'HARA: John, I am going to ask  
3 you, we've got about two minutes, so if you could wrap  
4 that up fairly quickly. I got one more.

5 MR. PEARCE: I would ask on the calendar for  
6 the next Policy Commission there be some discussion of the  
7 DEUR process. I know Amanda Stone with DEQ has worked  
8 very hard to talk with stakeholders about this and it  
9 would be very important, I think, for the stakeholders at  
10 large to know more about what's happening.

11 CHAIRMAN O'HARA: Commission members like to  
12 see the DEUR issue on the agenda next meeting?

13 MR. GILL: Yes.

14 MS. CLEMENT: Yes.

15 CHAIRMAN O'HARA: Great.

16 MR. PEARCE: Also, if the Department could  
17 provide an update next meeting on how it's going about  
18 trying to find somebody to work on the RBCA review and  
19 other RBCA -- closure requests under RBCA. I don't know  
20 if we -- we've been wondering about this for a long time,  
21 and it is becoming more and more an issue in my  
22 experience.

23 Finally, I was wondering if it would be possible  
24 if there was going to be a presentation on the kind of  
25 issues that are policies and the kinds of issues that

1   aren't policies for consideration by the Policy  
2   Commission.  If the person providing that presentation,  
3   Steve Burr, if he's going to have an analysis, if it could  
4   be shared in advance of the meeting, that would be  
5   helpful.  Similar to what Andrea is asking.

6               If it is just a statutory verbal report, maybe  
7   he doesn't have anything prepared in writing.  If he's got  
8   something prepared in writing, it would be great to see  
9   that in advance.  I think it is an important issue.

10              CHAIRMAN O'HARA:  Any more comments?

11              MR. PEARCE:  Finally, one more thing for the  
12   table on the next meeting, \$6 million was taken out of the  
13   State Assurance Fund by act of the Governor and the  
14   legislature.  That's obviously a huge impact on this  
15   program, and there's very much a threat that more money  
16   will be taken out of the program.

17              CHAIRMAN O'HARA:  Which fund did it come out  
18   of?

19              MR. PEARCE:  Both.

20              CHAIRMAN O'HARA:  Three each?

21              MR. PEARCE:  3.6 out of Maricopa and 2.4 out  
22   of nonMaricopa.  That action was immediate and affects  
23   fiscal year 2003.  There's obviously a lot of concern an  
24   even larger amount of money is going to be taken out of  
25   fiscal year 2004.  Perhaps we could talk about that a

1 little bit and issue a recommendation on pros or cons  
2 about taking more money out of the Assurance Fund,  
3 hopefully, more con than pro; but that's just my personal  
4 editorial.

5 CHAIRMAN O'HARA: Thank you, John. You're  
6 done?

7 MR. PEARCE: I think so.

8 CHAIRMAN O'HARA: I've got one minute.  
9 Sorry.

10 Dan, you had a comment?

11 MR. KELLEY: My issue, why don't -- I have  
12 discussed it with you. You know what it is. Do you want  
13 to tee it up for the Policy Commission members, the  
14 Reader's Digest version?

15 CHAIRMAN O'HARA: Everybody can read that.  
16 I'll check with Laurie and see if I can take a caucus of  
17 the members and see if they want to take this up, unless  
18 you guys want to read it. If you had a chance to read it  
19 and want to look at this at the next meeting. It is a  
20 letter put forth by Tierra Dynamic. I am not sure of the  
21 issue right now.

22 MS. DAVIS: The ownership determination?

23 CHAIRMAN O'HARA: Do members feel competent  
24 to make an -- Is this an issue you want to see on next  
25 meeting's agenda?

1 MS. PASHKOWSKI: Where did this come from?

2 MR. KELLEY: I handed it out.

3 MS. PASHKOWSKI: Do you have a set for  
4 Tamara?

5 MR. SMITH: Is this something that can be a  
6 policy change, or is this something that needs statutory  
7 change? If it is a statutory change, it is not going to  
8 happen this year.

9 MS. DAVIS: I haven't read it. I have no  
10 idea.

11 CHAIRMAN O'HARA: Let me see if I can  
12 circulate a caucus e-mail, if I can, and put it on next  
13 month's agenda items. I'll check and get back with you.

14 Okay. I don't have any speaker slips. No more  
15 public comment.

16 MS. FOSTER: Mr. Chairman, I think we need  
17 to be real careful. The document we received is very  
18 specific to a site, and I know we can't talk about  
19 specific issues.

20 MR. KELLEY: If I can, Mr. Chairman. It is  
21 just an example of the issue. I'm not asking for help  
22 with this site and this claim. This is happening  
23 repetitively at many sites.

24 CHAIRMAN O'HARA: I don't think -- if I  
25 understand last week's discussion, we are not precluded

1 from anything necessarily. It is just people that may be  
2 parties to those particular issues can't. And we as a  
3 Policy Commission should stick to broad issues. Okay.

4 Great. Next meeting is not going -- we are  
5 going to try to push it to the 30th. I'll send out an  
6 e-mail and see if everybody is available for the 30th. It  
7 will be either the 23rd or the 30th, and I'll let you  
8 know.

9 Without objection, I am going to adjourn the  
10 meeting. Any objection? Great. Thank you very much for  
11 being here.

12 (Whereupon, the proceedings adjourned at  
13 4:03 o'clock p.m.)  
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1 COUNTY OF MARICOPA )  
 ) SS.

2 STATE OF ARIZONA )

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